

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

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EXECUTIVE SECRETARY

May 11, 2000

Via Hand-Delivery

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

Re: Application of Memphis Networx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement Between MLGW and A&L regarding Joint Ownership of Memphis Networx, LLC; Docket No.99-00909 – Response to Staff's Data Requests dated May 4, 2000 and Supplemental Pre-Filed Testimony

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of the Supplemental Pre-Filed Testimony of the Applicant and Joint Petitioners in Response to the Staff's May 4, 2000 Data Requests. Exhibit 3, Exhibit 19 and Exhibit 49 are confidential and filed under seal pursuant to the Protective Order in this docket. Because of the voluminous nature of some of the exhibits, with the permission of Joe Werner of the Staff, we have only included five (5) copies of Exhibit 16, Exhibit 26 and Exhibit 27.

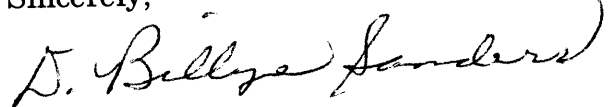
WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

K. David Waddell
May 11, 2000
Page 2

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "D. Billye Sanders".

D. Billye Sanders
Attorney for Memphis Light Gas &
Water Division and Memphis
Networx, LLC

DBS:lmb
Enclosures

cc: Parties of Record
Consumer Advocate (w/out confidential exhibits and Exhibits 16, 26 and 27)
J. Maxwell Williams, Esq.
Ward Huddleston, Esq.
John Knox Walkup, Esq.

Memphis Light, Gas & Water

Index of Public Records requested by the Tennessee Regulatory Authority Submitted May 9, 2000

100 MAY 11 PM 4 37

No.	Bates Range	Date	Description
1.	LT 0018- LT 0021	4/9/99	Ltr. to W. L. Thomson from Alex Lowe encl. executed copy of Cooperative Effort to Develop Telecommunications Business (Agreement attached)
2.	JM 0037- JM 0038	3/2/99	Ltr. to Wade Stinson and Alex Lowe from Joel Halvorson (ADL) - proposal re: scope of work to be completed in the next phase
3.	JM 0191- JM 0269	12/1/98	Strategic Telecommunications Partnership Proposal to MLGW by A&L Networks LLC
4.	MW 00267	3/24/99	E-Mail to MLGW.CORP from Erik Wetmore (ADL) re: Notes from Strategic Workshop held 3/23/99
5.	RFP 00491- RFP 00520A		MLGW Response to Request for Proposal- Strategic Communications by BellSouth Business Systems
6.	RFP 00650- RFP 00651	12/1/98	Original Proposal: Telecommunications Strategic Partner Contract No. 10522 (Business Relationship and Costs)
7.	RFP 00652- RFP 00659	12/1/98	Original Proposal: Telecommunications Strategic Partner Contract No. 10522 (Projected Revenues by Source, Cost Benefit Analysis, Telecom Customer Costs and Benefits, Background Info.,)
8.	RFP 00670- RFP 00674	12/1/98	Original Proposal: Telecommunications Strategic Partner Contract No. 10522 (Ability to Work w/ MLGW in a Strategic Partnership, Business and Financial Aspects of the Response, Technical Aspects of the Response)
9.	RFP 00675- RFP 00686	12/1/98	Original Proposal: Telecommunications Strategic Partner Contract No. 10522 (Remaining Technical Aspects of the Response)
10.	RFP 01124- RFP 01129	11/25/98	Interdepart. Memo from Mike Kissell Re: Summary of APPA 1998 Telecom. Workshop on 10/26 & 10/27/98
11.	RFP 01401- RFP 01402	4/22/99	Draft MOU b/t MLGW and City of Memphis
12.	WS 0218- WS 0265	1/6/99	Strategic Telecommunications Partnership Proposal to MLGW by A&L Network LLC, Arthur D. Little, Inc. and Nortel Networks
13.	WS 0408	3/10/99	E-Mail to MLGW (Wade Stinson) from Joel Halvorson (ADL) re: more involvement from MLGW
14.	WS 0672	4/8/99	E-Mail to Wade Stinson from Hoel Halvorson re: Primary Market Research and Meeting Schedules
15.	WS 0745	9/29/99	E-Mail to Wade Stinson from Michael Kissell re: Fiber for Entergy Project- MLGW & Mnet

16.	WS 0763	9/15/99	E-Mail to Michael Kissell from Allan Long re: Lease Capacity of Trunk System
17.	WS 0801- WS 0802	4/1/99	Ltr to JB Hollingsworth from Alex Lowe re: Joint Trench Installation
18.	WS 01644	5/24/99	Notes from phone call w/ Gene, Alan & Ward re: Conduit Inst.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

JUL 11 PM 4 29

RECEIVED SECRETARY

IN RE: APPLICATION OF MEMPHIS)
NETWORKX, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW") AND A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORKX, LLC)

DOCKET NO. 99-00909

JOINT PETITIONERS' RESPONSES TO DATA REQUESTS

The Amendment to the Application

1. Does the Amendment to the Application limit Memphis Networkx from offering Telecommunications services to end-users? **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
2. Does the Amendment require Memphis Networkx to offer service only to other facility based carriers or resellers holding a CCN granted by the Tennessee Regulatory Authority? If not, provide examples of types of carriers not regulated by the TRA that the Amendment would allow Memphis Networkx to serve. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
3. Specific Condition #1 in the Amendment to the Application mentions Memphis Networkx providing services on a wholesale basis at tariff rates and through approved Contract Service Arrangements. Have Memphis Networkx, or the joint petitioners, already entered into or completed any negotiations with any potential customers for the purpose of providing telecommunications on a wholesale basis or through contract Service

Arrangements? If so, provide a list of those potential customers and the date/dates negotiations began or documentation evidencing the results of completed negotiations, whichever apply. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**

4. Item 8 on page 6 of the original Application and Joint Petition in this docket lists the purposed territory in which the applicant intends to provide the telecommunications services. Has this statement changed as a result of the Amendment of the Application? **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
5. Please provide a detailed explanation of the specific conditions, contained in the Amendment to the Application, the applicant and joint petitioners are asking the Tennessee Regulatory Authority to approve including justification of why approval is warranted. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
6. Please provide a detailed definition of the term “under served” customers mentioned in Specific Condition #6 of the Amendment to the Application and how the definition and term apply to telecommunications services offered to the public in Tennessee. **Please see the attached Pre-Filed Testimony of Ward Huddleston and Wade Stinson.**
7. Please provide a detailed explanation of why the applicant and joint petitioners believe the negotiation/renegotiation of pole attachment agreements between MLGW and one or more of the intervenors, mentioned in Specific Condition #8, supports their petition for a CCN to offer telecommunications services in Tennessee. Provide any documentation or supporting evidence to support this explanation. **Please see the attached Pre-Filed Testimony of J. Maxwell Williams.**
8. Please provide a detailed explanation of why the applicant and joint petitioners believe the intervenors seeking or not seeking judicial relief, mentioned in Specific Condition #9, supports their petition for a CCN to offer telecommunications services in Tennessee. Provide any documentation or supporting evidence to support this explanation. **Please see the attached Pre-Filed Testimony of J. Maxwell Williams.**
9. Please provide a detailed explanation of why the applicant and joint petitioners believe the pending litigation, mentioned in Specific Condition #10, supports their petition for a CCN to offer telecommunications services in Tennessee. Provide any documentation or supporting evidence to support this explanation. **Please see the attached Pre-Filed Testimony of J. Maxwell Williams.**

10. Please provide a detailed explanation of why the applicant and joint petitioners believe that preventing competitors from seeking to legislatively modify municipal authority to participate in telecommunications activities or joint ventures, mentioned in Specific Condition #11, supports their petition for a CCN to offer telecommunications services in Tennessee. Provide any documentation or supporting evidence to support this explanation. **Please see the attached Pre-Filed Testimony of J. Maxwell Williams.**

The Operating Agreement

11. Article 3.1 of the Operating Agreement lists the initial members of Memphis Networkx as MLGW and A&L. Does MLGW, as used in the Opening Agreement mean the Telecommunications Division of MLGW? **Please see the attached Pre-Filed Testimony of J. Maxwell Williams.**
12. Tennessee Code Annotated § 7-52-405(1) states that a municipality shall allocate to the cost of providing services authorized by § 7-52-401 an amount for attachments to poles owned by the municipality a rate equal to the highest rate charged by the municipality to any other person or entity for comparable pole attachments. What are the applicant's and joint petitioner's positions regarding the allocation of costs for occupancy and rental of conduit belonging to MLGW by Memphis Networkx? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
13. Have any pole attachment, conduit occupancy and/or fiber optic agreements been entered into between Memphis Networkx and MLGW? If so, please provide them. If not, will the applicant and joint petitioner be willing to make those agreements a part of the Operating Agreement if and when they are made? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
14. Has any inner duct or any other structure capable of telecommunications facilities of any kind ever been installed by MLGW in or adjacent to St. Jude Hospital and/or the housing developments of Jefferson Square, R.Q. Venson or Barry Holmes? If so, please describe in detail the type of structure or facility, when it was installed, who installed it, the owner, its present status (working, occupied, vacant or spare), whether it is subject to any contracts or lease agreements with other parties and who those parties are. **Please see the attached Pre-Filed Testimony of Wade Stinson.**
15. The Operating Agreement (Section 9.1(d)) contemplates a total aggregate of capital contributions to Memphis Networkx to be approximately \$30,000,000. Approximately \$14,000,000 should be provided by A&L. How does A&L Networks intend to provide the capital they have committed to invest? Please

identify all committed sources of capital A&L Networks intends to use in fulfilling its investment obligations in the joint venture with MLGW and provide documents showing this funding is available. **Please see the attached Pre-Filed Testimony of Alex Lowe.**

Construction of Facilities

16. According to a letter (public record date stamp WS 0768), written to Larry Thompson, Senior Vice President of Operations-MLGW and Wade Stinson, Vice President of Construction and Maintenance-MLGW by Alex Lowe of A&L Underground, Mr. Lowe confirms the start of installation of conduit approved by MLGW during the week of June 1, 1999. This letter indicates the conduit would be owned by A&L Networks, LLC until transferred to Memphis Networkx.
 - A. Was the conduit installed? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
 - B. Who owns the rights of way where the conduit was installed? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
 - C. Who paid for the installation? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
 - D. Who owned the conduit following installation? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
 - E. Who owns the conduit now? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
 - F. Has any type of telecommunications facility been placed in this conduit? **Please see the attached Pre-Filed Testimony of Wade Stinson / Alex Lowe.**
 - G. Where is this conduit located? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
 - H. Did A&L pay MLGW anything for this conduit? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
17. Does A&L Underground or any affiliate presently own any installed conduit or rights-of-way that will eventually be used by, transferred or sold to MLGW or Memphis Networkx, LLC within the next 3 years? If so, please explain how the price of the conduit or rights-of-way will be determined. **Please see the attached Pre-Filed Testimony of Wade Stinson / Alex Lowe/ Wade Stinson.**
18. Does MLGW own any installed conduit or conduit in the process of being installed or rights-of-way that will be used by, sold or transferred to Memphis Networkx, LLC within the next 3 years? If so, please explain how the price

will be determined. **Please see the attached Pre-Filed Testimony of Wade Stinson.**

19. Does Memphis Networkx, LLC own any installed conduit at present or is any being installed at present under a negotiated contract? If so, please explain and provide a copy of the contract. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
20. Will Memphis Networkx, LLC use any assets of MLGW other than conduit? If so, provide a detailed description of such assets and an explanation of how Memphis Networkx will be charged for such use. **Please see the attached Pre-Filed Testimony of Wade Stinson.**
21. Will Memphis Networkx, LLC use MLGW's Energy Control System (ECS) or any component of such system? If so, will Memphis Networkx be charged for such use and how will those charges be determined? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
22. Will Memphis Networkx, LLC have access to the inventory or databases of MLGW's facilities? If so, do any other unaffiliated providers have such access and how will Memphis Networkx be charged for such access or use? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
23. Have all of MLGW's expenses associated with the creation of the Telecommunications Division and Memphis Networkx been assigned to the Telecommunications Division of MLGW? Provide a schedule of all such expenses including accrued legal expenses as of April 30, 2000. **Please see the attached Pre-Filed Testimony of Mike Whitten.**
24. The Pole Attachment and Master Conduit Occupancy Agreement between MLGW and MCImetro Access and the Fiber Optic Agreement between MLGW and NEXTLINK (formerly CSI) both specify that fibers will be made available to MLGW by NEXTLINK and MCImetro Access for the internal use of MLGW. Does MLGW intend to allow Memphis Networkx to use any of these fibers? If so, how will Memphis Networkx be charged and how will such charges be determined? **Please see the attached Pre-Filed Testimony of Wade Stinson.**
25. The Fiber Optics Agreement between Hyperion Communications of Tennessee and MLGW specifies that six (6) optical fibers will be made available to MLGW by Hyperion but, does not appear to limit the use of these fibers by MLGW to internal use. Does MLGW intend to allow Memphis Networkx to use any of these fibers? If so, how will Memphis Networkx be charged and how will such charges be determined? **Please see the attached Pre-Filed Testimony of Wade Stinson.**

26. On page 8 of his pre-filed rebuttal testimony, Mr. Wade Stinson mentions a contract that A&L Underground had with MLGW to install gas and underground electric facilities. Please describe in detail the work done, all locations where the work was performed and whether A&L Underground was paid by MLGW to undertake and complete the work in accordance with the contract. Please provide a copy of this contract. **Please see the attached Pre-Filed Testimony of Wade Stinson.**
27. How long has A&L Underground been performing contract work for MLGW and what is the total amount to date MLGW has paid A&L Underground since A&L first started performing work under contract? Please provide a copy of all executed contracts between MLGW and A&L Underground or any of its subsidiaries. **Please see the attached Pre-Filed Testimony of Wade Stinson.**
28. On April 14, 2000, Time Warner filed a Motion for Order to Allow Additional Discovery and to Amend Procedural Schedule. Attached to that filing was an Exhibit 11 listing several locations where A&L Underground allegedly completed placing approximately 34 miles of inner duct capable of housing fiber optic cable. Was this construction undertaken by MLGW and A&L Underground under the contract mentioned in item #26 above? If not, please provide details of the work done and whether A&L Underground was paid by MLGW to undertake and complete the work. **Please see the attached Pre-Filed Testimony of Wade Stinson & Alex Lowe.**

Cost and Cost Allocation

29. Please explain in detail the functions of the Telecom Division prior to, during and after the formation of Memphis Networkx. **Please see the attached Pre-Filed Testimony of Mike Whitten.**
30. How many employees are presently employed in the Telecom Division? Will additional employees be hired in the future? **Please see the attached Pre-Filed Testimony of Mike Whitten.**
31. What is the total annual payroll of the Telecom Division? **Please see the attached Pre-Filed Testimony of Mike Whitten.**
32. The cost allocation manual provided on April 5, 2000 indicates that allocations and percentages have not been developed for the Telecommunications Division. For each account of the Electric Division, please explain the method and procedure for allocating applicable amounts to the Telecommunications Division. **Please see the attached Pre-Filed Testimony of John McCullough.**

33. Provide a chart of accounts for MLGW's Electric and Telecommunications Divisions. **Please see the attached Pre-Filed Testimony of John McCullough.**
34. Provide a copy of Memphis Network's chart of accounts. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
35. The TRA requires all TN regulated telephone companies to follow the Uniform System of Accounts (USOA) as adopted and amended by the FCC when filing reports with this agency (TRA Rule 1220-4-.11). Will Memphis Network use this USOA for accounting purposes? If not, what system of accounts will Memphis Network be using? **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
36. For each example presented below, provide all debit and credits MLGW will make to its books to account for the expenses incurred. Be sure to provide a description of the accounts used to book the entry and the basis for allocations to the MLGW divisions:
- Example 1: The president of MLGW has salary expenses of \$1,000 for the month of April 2000. How will this expense be booked and allocated to the appropriate divisions? **Please see the attached Pre-Filed Testimony of John McCullough.**
- Example 2: MLGW's president is allocated \$300 for depreciation expenses incurred during April 2000. How will this expense be booked and allocated to the appropriate divisions? **Please see the attached Pre-Filed Testimony of John McCullough.**
- Example 3: During April 2000, Memphis Network incurred legal expenses of \$500 during litigation of its CCN application. Will MLGW or Memphis Network book this expense? Please provide the debits and credits to book this expense. **Please see the attached Pre-Filed Testimony of John McCullough.**
37. (a) Will MLGW provide a periodic "cost allocation compliance" audit as it has indicated it would in TRA Data Request Item 2 dated March 23, 2000? **Please see the attached Pre-Filed Testimony of Mike Whitten**
- (b) What auditing procedures, both internal and external, have been or will be implemented to assure compliance with § 7-52-401, *et seq.* **Please see the attached Pre-Filed Testimony of Mike Whitten.**
38. (a) The introduction of MLGW's Cost Allocation Manual (CAM) states its Electric Division has shared with A&L Networks-TN "Prior Costs and

Subsequent Costs” as defined in the Agreement dated November 8, 1999. Provide the total amount of these costs. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**

- (b) Of this total amount, how much will be reimbursed to MLGW? **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
 - (c) Of this total amount, how much will be reimbursed to A&L? **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
 - (d) Are these costs accounted for on the books of the Telecommunications Division or Memphis Networkx? Provide the accounts and account description used to book these costs. **Please see the attached Pre-Filed Testimony of Mike Whitten.**
39. (a) The introduction of MLGW’s CAM states Memphis Networkx has its own professional staff (Chief Manager, Chief Financial Officer, Office Manager, etc.). Provide a list of the employees presently employed at Memphis Networkx. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
- (b) Were these employees included in the financial projections given to the TRA for Y/E 2000? If not, explain why. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
40. Page 5 of MLGW’s CAM Policy & Guidelines section states the supervisor’s area charges are allocated “based on the function of the area.”
- (a) Please explain what “based on the function of the area” means. **Please see the attached Pre-Filed Testimony of John McCullough.**
- (b) Are these changes based on activities? If not, why? **Please see the attached Pre-Filed Testimony of John McCullough.**
41. Page 11 of MLGW’s CAM Policy & Guidelines section states that a review of MLGW Accounting Policy is made every five years. **Please see the attached Pre-Filed Testimony of John McCullough.**
- (a) Provide the date when the last review was made.
- (b) Provide a copy of this review.
- (c) Has the Accounting Policy been reviewed since the formation of the Telecommunications Division and Memphis Networkx?

42. Pages 13 and 14 of MLGW's CAM shows standard allocation percentages used to allocate expenses between the electric, gas and water divisions. **Please see the attached Pre-Filed Testimony of John McCullough.**
- (a) How were these percentages calculated? How often are these percentages updated?
 - (b) What percentage will be used to allocate expenses to the Telecom Division?
 - (c) 43% of Customer expense is allocated to the Electric Division. Is any of this expense further re-allocated to the Telecom Division? Please explain.
 - (d) Is MLGW involved in any business activities other than gas, light, water or telecommunications? For example is MLGW involved in cellular activities? How are costs allocated to these activities if there are any? Does MLGW's CAM have this type of procedure documented?
43. Page 14 of MLGW's CAM refers to "custom splits." What is a "custom split?" Please provide examples. **Please see the attached Pre-Filed Testimony of John McCullough.**
44. The "Allocation of Common Cost" Section of MLGW's CAM states that: "A fourth allocation to Telecom has been added and a percentage assigned for several employees' labor and for disbursements." **Please see the attached Pre-Filed Testimony of John McCullough.**
- (a) Please elaborate on this statement. Identify the employees and their positions along with a list of the "disbursements" being referred to.
 - (b) Will a certain percentage be assigned to the Telecom Division at a later date? If so, when? Will it be submitted to the TRA?
45. The "Allocation of Common Cost" Section of MLGW's CAM shows that 5% of Sheryl Radicioni's fixed time charges is allocated to the Telecom Division.
- (a) Please explain how this percentage of 5% was calculated. How often is it updated? **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (b) Please explain how the 95% of fixed time charges are allocated to the other MLGW divisions in this example. **Please see the attached Pre-Filed Testimony of John McCullough.**

- (c) When common costs are allocated to the Telecom Division, are these costs passed on to Memphis Networkx? Please explain how this process works. **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (d) Who will be performing Memphis Networkx's customer billing and what charges will be paid for such billing? **Please see the attached Pre-Filed Testimony of John McCullough & Ward Huddleston.**
 - (e) Does MLGW perform billing functions for any other entities? **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (f) Will MLGW perform any construction and/or engineering functions for Memphis Networkx? If so, will Memphis Networkx be charged for these activities? How will these charges be determined? Provide a copy of any contract for such services. **Please see the attached Pre-Filed Testimony of John McCullough.**
46. The "Administrative and General Expense Allocation Factor" Section of MLGW's CAM states that: "At this time, this will not be a vehicle for allocating costs to the Telecom Division as these costs are identified specifically."
- (a) How are A&G costs identified specifically for the Telecom Division? **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (b) Will the Telecom Division be allocating any of the common A&G expenses? **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (c) Is the Telecom Division allocated any A&G costs? If so, are these costs passed on to Memphis Networkx? Provide a detailed description of the procedures used to accomplish this. **Please see the attached Pre-Filed Testimony of John McCullough.**
47. The "Interdepartmental Rents" Section of MLGW's CAM states that: "During 1999, we allocated a small percentage to the Telecom Division for office space and equipment used by MLGW employees who were directly involved with Telecom Division matters."
- (a) Provide the total amount of MLGW Interdepartmental Rents expenses allocated to the Telecom Division during 1999. **Please see the attached Pre-Filed Testimony of John McCullough.**

- (b) Provide a detailed explanation of how this allocation was determined and the basis for such allocation. **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (c) Provide the total amount of MLGW Interdepartmental Rent expense for 1999. **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (d) How will interdepartmental rent expense be allocated to the Telecom Division in the future? **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (e) Has Memphis Networkx previously used any of MGLW facilities (buildings, computers, equipment, office furniture, etc.)? Will Memphis Networkx be using MGLW facilities in the future? If so, will Memphis Networkx be charged for such use and how will charges be determined? **Please see the attached Pre-Filed Testimony of John McCullough.**
48. During 1999, \$118,686 of labor costs was allocated to the Telecom Division. This amount was based on an allocation of eleven MGLW employees' salary and wages.
- (a) Please explain how the salary allocation percentage of each MLGW's employee was calculated. For example, Herman Morris' salary allocation was 5%, W.L. Thompson's salary allocation factor was 10%, etc. **Please see the attached Pre-Filed Testimony of John McCullough.**
 - (b) Were any other MLGW employees involved in the formation of the Telecommunications Division or Memphis Networkx during 1999 or prior to 1999? **Please see the attached Pre-Filed Testimony of John McCullough.**
49. Regarding Memphis Networkx's Balance Sheet for the year ended December 31, 1999:
- (a) Please explain why the three equity amounts do not add up to "Total Equity" of \$(954,645). **Please see the attached Pre-Filed Testimony of Ward Huddleston.**
 - (b) The Balance Sheet shows "Deposits" of \$70,509. Please explain what these deposits are for. **Please see the attached Pre-Filed Testimony of Ward Huddleston.**

50. In light of the Amendment to the Application and change in business plans, does MLGW need to revise their projected financial statements? **Please see the attached Pre-Filed Testimony of Ward Huddleston & John McCullough.**
51. Please list all expenses incurred prior to 1999 related to MLGW's entry into telecommunications. How have these costs been recovered? **Please see the attached Pre-Filed Testimony of Mike Whitten.**
52. Please provide the following public records bates stamped as follows:

RFP 01401
WS 0745
RFP 01124
JM 0191-0269
RFP 00650-00651
RFP 00652-00659
RFP 00670-00674
RFP 00675 to end
RFP 00491-00520A
MW 00267
JM 0037-0038
WS 0218-0265
WS 0408
WS 0672
LT 0018
WS 0801-0802
WS 1644
WS 0763

Please see Exhibit 52.

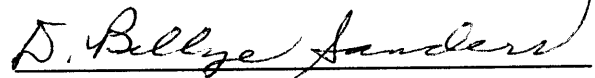
LIST OF EXHIBITS

(Corresponding to Data Requests)

Exhibit 3	Letters of Intent [Confidential]
Exhibit 16	Subdivision Maps
Exhibit 19	Memphis Networx Chart of Accounts [Confidential]
Exhibit 23-1	MLGW Annual Report
Exhibit 23-2	Schedule of Expenses
Exhibit 26	Payments to A&L Underground (1997-2000)
Exhibit 27	Master Contracts between MLGW and A&L Underground
Exhibit 29	MLGW Organizational Chart
Exhibit 33	MLGW Electric Division Chart of Accounts
Exhibit 41	Review of MLGW Accounting Policy
Exhibit 49	Response to Data Request #49 / Memphis Networx Draft Balance Sheet [Confidential]
Exhibit 52	Public Records

CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 11th day of May, 2000, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the Counsel of Record listed below.


D. Billye Sanders, Esq.

Henry Walker, Esq.
Boult Cummings Conners &
Berry, PLC
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Nashville, TN 37219

Attorney for NEXTLINK, Tennessee, Inc.

Charles B. Welch, Jr., Esq.
Farris, Mathews, Branan, Bobango &
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Attorney for Time Warner of the
Mid-South L.P., Time Warner

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and the Tennessee Cable
Telecommunications Association

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Telephone Company, Tellico Telephone
Company, Inc. and Tennessee Telephone
Company

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Attorney for the International
Brotherhood of Electrical Workers
Union, Local 1288

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Consumer Advocate Division

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**

3 **IN RE: APPLICATION OF MEMPHIS)**
4 **NETWORK, LLC FOR A CERTIFICATE OF)**
5 **PUBLIC CONVENIENCE AND)**
6 **NECESSITY TO PROVIDE INTRASTATE)**
7 **TELECOMMUNICATIONS SERVICES)** **DOCKET NO. 99-00909**
8 **AND JOINT PETITION OF MEMPHIS)**
9 **LIGHT GAS AND WATER DIVISION,)**
10 **A DIVISION OF THE CITY OF MEMPHIS,)**
11 **TENNESSEE ("MLGW") AND A&L)**
12 **NETWORKS-TENNESSEE, LLC ("A&L"))**
13 **FOR APPROVAL OF AGREEMENT)**
14 **BETWEEN MLGW AND A&L REGARDING)**
15 **JOINT OWNERSHIP OF MEMPHIS)**
16 **NETWORK, LLC)**

17
18
19 **PRE-FILED SUPPLEMENTAL TESTIMONY OF WARD HUDDLESTON, JR.**
20 **ON BEHALF OF MEMPHIS NETWORK, LLC**
21

22 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

23 **A. My name is Ward Huddleston, Jr., and I serve as the Chief Manager of**
24 **Memphis Network, LLC. My business address is 7555 Appling Center Drive,**
25 **Memphis, Tennessee 38133.**

26 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS DOCKET?**

27 **A. Yes.**

28 **Q. DOES THE AMENDMENT TO THE APPLICATION LIMIT MEMPHIS**
29 **NETWORK FROM OFFERING TELECOMMUNICATIONS SERVICES**
30 **TO END-USERS? (#1)**

31 **A. Under the amendment, Memphis Network or MLGW or their principals may**
32 **apply to the TRA to serve underserved areas at any time. However, Memphis**
33 **Network has agreed not to serve other end-users directly for five (5) years**
34 **from June 1, 2000. The public interest will still be served by the modified**
35 **Application by facilitating the entry of competition through other carriers.**

36 **Q. DOES THE AMENDMENT REQUIRE MEMPHIS NETWORK TO**
37 **OFFER SERVICE ONLY TO OTHER FACILITY BASED CARRIERS**

1 OR RESELLERS HOLDING A CCN GRANTED BY THE TENNESSEE
2 REGULATORY AUTHORITY? IF NOT, PROVIDE EXAMPLES OF
3 TYPES OF CARRIERS NOT REGULATED BY THE TRA THAT THE
4 AMENDMENT WOULD ALLOW MEMPHIS NETWORKX TO SERVE.
5 (#2)

- 6 A. No. Memphis Networkx would be allowed to serve Interexchange carriers,
7 wireless carriers, shared tenant service providers, international transmission
8 corporations licensed by the Federal Communications Commission, CATV
9 providers, video on demand providers, wide area network providers, inter-
10 local area network providers, virtual private network providers, application
11 service providers, cable modem providers, digital subscriber line providers
12 and other data related providers.

13 Q. SPECIFIC CONDITION #1 IN THE AMENDMENT TO THE
14 APPLICATION MENTIONS MEMPHIS NETWORK PROVIDING
15 SERVICES ON A WHOLESALE BASIS AT TARIFF RATES AND
16 THROUGH APPROVED CONTRACT SERVICE AGREEMENTS.
17 HAVE MEMPHIS NETWORK, OR THE JOINT PETITIONERS,
18 ALREADY ENTERED INTO OR COMPLETED ANY NEGOTIATIONS
19 WITH ANY POTENTIAL CUSTOMERS FOR THE PURPOSE OF
20 PROVIDING TELECOMMUNICATIONS ON A WHOLESALE BASIS
21 OR THROUGH CONTRACT SERVICE ARRANGEMENTS? IF SO,
22 PROVIDE A LIST OF THOSE POTENTIAL CUSTOMERS AND THE
23 DATE/DATES NEGOTIATIONS BEGAN OR DOCUMENTATION
24 EVIDENCING THE RESULTS OF COMPLETED NEGOTIATIONS,
25 WHICHEVER APPLY. (#3)

- 26 A. Memphis Networkx has entered into letters of intent to discuss potential use of
27 its network with various content providers. Contact has been made with
28 several competitive local exchange providers, interexchange carriers, an
29 international transmissions corporation and other potential users of the
30 network. No negotiations have been undertaken except as set out in the
31 letters of intent. No final agreements have been entered into and no
32 negotiations have been completed that have not been memorialized in
33 writing. All of the letters of intent were executed in the February and March,
34 2000 timeframe. Copies are attached as Confidential Exhibit 3.

35 Q. ITEM 8 ON PAGE 6 OF THE ORIGINAL APPLICATION AND JOINT
36 PETITION IN THIS DOCKET LISTS THE PROPOSED TERRITORY
37 IN WHICH THE APPLICANT INTENDS TO PROVIDE THE
38 TELECOMMUNICATIONS SERVICES. HAS THIS STATEMENT
39 CHANGED AS A RESULT OF THE AMENDMENT OF THE
40 APPLICATION? (#4)

1 A. No. However, item 7 on p. 5 of the original application has changed and the
2 amended language was filed with the TRA as part of the Explanation of
3 Settlement Agreement filed in this docket.

4 Q. PLEASE PROVIDE A DETAILED EXPLANATION OF THE SPECIFIC
5 CONDITIONS, CONTAINED IN THE AMENDMENT TO THE
6 APPLICATION, THE APPLICANT AND JOINT PETITIONERS ARE
7 ASKING THE TENNESSEE REGULATORY AUTHORITY TO
8 APPROVE INCLUDING JUSTIFICATION OF WHY APPROVAL IS
9 WARRANTED. (#5)

10 A. Please see the Explanation of Settlement Agreement filed on May 5, 2000.
11 Approval is warranted because the Applicant and Joint Petitioners meet the
12 statutory criteria for approval of the Application as amended and the
13 Operating Agreement.

14 Q. PLEASE PROVIDE A DETAILED DEFINITION OF THE TERM
15 "UNDER SERVED" CUSTOMERS MENTIONED IN SPECIFIC
16 CONDITION #6 OF THE AMENDMENT TO THE APPLICATION AND
17 HOW THE DEFINITION AND TERM APPLY TO
18 TELECOMMUNICATIONS SERVICES OFFERED TO THE PUBLIC IN
19 TENNESSEE. (#6)

20 A. This question gets to the heart of the nature of a convergent broadband
21 network. Convergent networks are packet based and do not fall into the
22 traditional definitions of voice, video and data. A customer who has plain old
23 telephone service may still be under served within the meaning of condition
24 #6. The intent is to allow the Applicant and Joint Petitioners the ability to
25 apply to the TRA to directly serve customers on a retail basis who do not have
26 currently offered to them the type of convergent network services Applicant
27 seeks to deploy in consideration of the price, quality, choice and availability of
28 service.

29 Q. PLEASE PROVIDE A DETAILED EXPLANATION OF WHY THE
30 APPLICANT AND JOINT PETITIONERS BELIEVE THE
31 INTERVENORS SEEKING OR NOT SEEKING JUDICIAL RELIEF,
32 MENTIONED IN SPECIFIC CONDITION #9, SUPPORTS THEIR
33 PETITION FOR A CCN TO OFFER TELECOMMUNICATIONS
34 SERVICES IN TENNESSEE. PROVIDE ANY DOCUMENTATION OR
35 SUPPORTING EVIDENCE TO SUPPORT THIS EXPLANATION. (#8)

36 A. The intervenors' agreement not to seek judicial relief will facilitate bringing
37 finality to the proceedings and facilitate the Applicant's entry in the market
38 without the uncertainty of protracted proceedings.

1 Q. PLEASE PROVIDE A DETAILED EXPLANATION OF WHY THE
2 APPLICANT AND JOINT PETITIONERS BELIEVE THE PENDING
3 LITIGATION, MENTIONED IN SPECIFIC CONDITION #10,
4 SUPPORTS THEIR PETITION FOR A CCN TO OFFER
5 TELECOMMUNICATIONS SERVICES IN TENNESSEE. PROVIDE
6 ANY DOCUMENTATION OR SUPPORTING EVIDENCE TO
7 SUPPORT THIS EXPLANATION. (#9)

8 A. Condition #10 is not subject to TRA jurisdiction and Applicant is not
9 requesting TRA approval of this condition to operate. This is a contractual
10 provision disclosed in the interest of providing full disclosure of the
11 settlement agreement to the TRA.

12 Q. PLEASE PROVIDE A DETAILED EXPLANATION OF WHY THE
13 APPLICANT AN JOINT PETITIONERS BELIEVE THAT
14 PREVENTING COMPETITORS FROM SEEKING TO
15 LEGISLATIVELY MODIFY MUNICIPAL AUTHORITY TO
16 PARTICIPATE IN TELECOMMUNICATIONS ACTIVITIES OR JOINT
17 VENTURES, MENTIONED IN SPECIFIC CONDITION #11,
18 SUPPORTS THEIR PETITION FOR A CCN TO OFFER
19 TELECOMMUNICATIONS SERVICES IN TENNESSEE. PROVIDE
20 ANY DOCUMENTATION OR SUPPORTING EVIDENCE TO
21 SUPPORT THIS EXPLANATION. (#10)

22 A. I concur with the comments in the Pre-filed Supplemental Testimony of Max
23 Williams with respect to this question.

24 Q. DOES A&L UNDERGROUND OR ANY AFFILIATE PRESENTLY OWN
25 ANY INSTALLED CONDUIT OR RIGHTS-OF-WAY THAT WILL
26 EVENTUALLY BE USED BY, TRANSFERRED OR SOLD TO MLGW
27 OR MEMPHIS NETWORKX, LLC WITHIN THE NEXT 3 YEARS? IF SO,
28 PLEASE EXPLAIN HOW THE PRICE OF THE CONDUIT OR
29 RIGHTS-OF-WAY WILL BE DETERMINED? (#17)

30 A. No. None of the installed conduit or rights-of-way owned by A&L
31 Underground or any affiliate will be transferred to Memphis Networkx, LLC
32 within the next three years.

33 Q. DOES MEMPHIS NETWORKX, LLC OWN ANY INSTALLED CONDUIT
34 AT PRESENT OR IS ANY BEING INSTALLED AT PRESENT UNDER
35 A NEGOTIATED CONTRACT? IF SO, PLEASE EXPLAIN AND
36 PROVIDE A COPY OF THE CONTRACT. (#19)

37 A. No.

1 Q. PROVIDE A COPY OF MEMPHIS NETWORK'S CHART OF
2 ACCOUNTS. (#34)

3 A. This was submitted as Confidential Appendix 1 to the TCTA Data Responses.
4 A copy is attached as Confidential Exhibit 34 to this testimony.

5 Q. THE TRA REQUIRES ALL TENNESSEE REGULATED TELEPHONE
6 COMPANIES TO FOLLOW THE UNIFORM SYSTEM OF ACCOUNTS
7 (USOA) AS ADOPTED AND AMENDED BY THE FCC WHEN FILING
8 REPORTS WITH THIS AGENCY (TRA RULE 1220-4-11). WILL
9 MEMPHIS NETWORK USE THIS USOA FOR ACCOUNTING
10 PURPOSES? IF NOT, WHAT SYSTEM OF ACCOUNTS WILL
11 MEMPHIS NETWORK BE USING? (#35)

12 A. No. As stated on page 10 of the original application, Memphis Networkx
13 stated that it intends to keep its books in accordance with generally accepted
14 accounting principles ("GAAP"). This statement in the application is
15 intended to be a request for approval of a waiver of the use of the USOA.

16 Q. FOR EACH EXAMPLE PRESENTED BELOW, PROVIDE ALL DEBIT
17 AND CREDITS MLGW WILL MAKE TO ITS BOOKS TO ACCOUNT
18 FOR THE EXPENSES INCURRED. BE SURE TO PROVIDE A
19 DESCRIPTION OF THE ACCOUNTS USED TO BOOK THE ENTRY
20 AND THE BASIS FOR ALLOCATIONS TO THE MLGW DIVISIONS
21 (#36):

22 EXAMPLE 1: THE PRESIDENT OF MLGW HAS SALARY
23 EXPENSES OF \$1,000 FOR THE MONTH OF APRIL 2000.
24 HOW WILL THIS EXPENSE BE BOOKED AND
25 ALLOCATED TO THE APPROPRIATE DIVISIONS?

26 EXAMPLE 2: MLGW'S PRESIDENT IS ALLOCATED \$300 FOR
27 DEPRECIATION EXPENSES INCURRED DURING
28 APRIL 2000. HOW WILL THIS EXPENSE BE BOOKED
29 AND ALLOCATED TO THE APPROPRIATE DIVISIONS?

30 EXAMPLE 3: DURING APRIL 2000, MEMPHIS NETWORK
31 INCURRED LEGAL EXPENSES OF \$500 DURING
32 LITIGATION OF ITS CCN APPLICATION. WILL MLGW
33 OR MEMPHIS NETWORK BOOK THIS EXPENSE?
34 PLEASE PROVIDE THE DEBITS AND CREDITS TO
35 BOOK THIS EXPENSE.

36 A. I will respond to Example 3 only. Memphis Networkx will book the expense.
37 The accounting entry will be a debit to legal expense of \$500 and a credit to
38 accounts payable of \$500.

- 1 Q. (A) THE INTRODUCTION OF MLGW'S COST ALLOCATION
2 MANUAL (CAM) STATES ITS ELECTRIC DIVISION HAS
3 SHARED WITH A&L NETWORKS-TN "PRIOR COSTS AND
4 SUBSEQUENT COSTS" AS DEFINED IN THE AGREEMENT
5 DATED NOVEMBER 8, 1999. PROVIDE THE TOTAL AMOUNT
6 OF THESE COSTS.
- 7 (B) OF THIS TOTAL AMOUNT, HOW MUCH WILL BE
8 REIMBURSED TO MLGW?
- 9 (C) OF THIS TOTAL AMOUNT, HOW MUCH WILL BE
10 REIMBURSED TO A&L?
- 11 (D) ARE THESE COSTS ACCOUNTED FOR ON THE BOOKS OF
12 THE TELECOMMUNICATIONS DIVISION OR MEMPHIS
13 NETWORKX? PROVIDE THE ACCOUNTS AND ACCOUNT
14 DESCRIPTION USED TO BOOK THESE COSTS. (#38)
- 15 A. (A) The total amount of Prior and Subsequent Costs and Interim
16 Contributions through December 31, 1999 was \$2,947,942. Interim
17 Contributions have been included in this Response because the members
18 have made Interim Contributions to the capital of Memphis Networkx since its
19 formation in November, 1999, rather than sharing expenses as Subsequent
20 Costs. A&L Networkx-Tennessee's portion through December 31, 1999 was
21 \$1,474,071 and MLGW's portion through December 31, 1999 was \$1,473,871.
22 The difference of \$200 will be made up in the member capital contributions
23 following regulatory approval.
- 24 (B), (C) Neither member will be reimbursed as such, but both members will
25 instead receive a credit against their respective capital contributions
26 following regulatory approval.
- 27 (D) Under the November 8, 1999 "Umbrella Agreement," Prior Costs and
28 Subsequent Costs (along with Interim Contributions, which are capital
29 contributions to Memphis Networkx, LLC) are to be shared equally between
30 the members prior to receiving regulatory approval. Following regulatory
31 approval and upon payment of the capital contributions as called for under
32 the Umbrella Agreement, each party's payments of Prior and Subsequent
33 Costs and Interim Contributions are credited against each member's required
34 capital contribution to the Memphis Networkx, LLC. Therefore, following
35 regulatory approval, the members will have effectively shared Prior Cost and
36 Subsequent Costs in proportion to their capital contributions to Memphis
37 Networkx.
- 38 Q. (A) THE INTRODUCTION OF MLGW'S CAM STATES MEMPHIS
39 NETWORKX HAS ITS OWN PROFESSIONAL STAFF (CHIEF
40 MANAGER, CHIEF FINANCIAL OFFICER, OFFICE MANAGER,

1 ETC.). PROVIDE A LIST OF THE EMPLOYEES PRESENTLY
2 EMPLOYED AT MEMPHIS NETWORKX.

3 (B) WERE THESE EMPLOYEES INCLUDED IN THE FINANCIAL
4 PROJECTIONS GIVEN TO THE TRA FOR Y/E 2000? IF NOT,
5 EXPLAIN WHY. (#39)

6 A. The current employees of Memphis Networkx are: Ward Huddleston, Jr, Chief
7 Manager and Chief Executive Officer; David Ori, Chief Financial Officer;
8 Ricky Wilkins, General Counsel (part-time); Carlotta Maclin, Director of
9 Operations; Randy McDaniel, Manager of Engineering; Kim Covington,
10 Facilities Manager; Dennis James, Manager of Construction; and Peggy
11 Autry, Design Engineer. These employees were included in the financial
12 projections given to the TRA for year end 2000.

13 Q. THE "ALLOCATION OF COMMON COST" SECTION OF MLGW'S
14 CAM SHOWS THAT 5% OF SHERYL RADICION'S FIXED TIME
15 CHARGES IS ALLOCATED TO THE TELECOM DIVISION.

16 (A) PLEASE EXPLAIN HOW THIS PERCENTAGE OF 5% WAS
17 CALCULATED. HOW OFTEN IS IT UPDATED?

18 (B) PLEASE EXPLAIN HOW THE 95% OF FIXED TIME CHARGES
19 ARE ALLOCATED TO THE OTHER MLGW DIVISIONS IN THIS
20 EXAMPLE.

21 (C) WHEN COMMON COSTS ARE ALLOCATED TO THE
22 TELECOM DIVISION, ARE THESE COSTS PASSED ON TO
23 MEMPHIS NETWORKX? PLEASE EXPLAIN HOW THIS
24 PROCESS WORKS.

25 (D) WHO WILL BE PERFORMING MEMPHIS NETWORKX'S
26 CUSTOMER BILLING AND WHAT CHARGES WILL BE PAID
27 FOR SUCH BILLING?

28 (E) DOES MLGW PERFORM BILLING FUNCTIONS FOR ANY
29 OTHER ENTITIES?

30 (F) WILL MLGW PERFORM ANY CONSTRUCTION AND/OR
31 ENGINEERING FUNCTIONS FOR MEMPHIS NETWORKX? IF
32 SO, WILL MEMPHIS NETWORKX BE CHARGED FOR THESE
33 ACTIVITIES? HOW WILL THESE CHARGES BE
34 DETERMINED? PROVIDE A COPY OF ANY CONTRACT FOR
35 SUCH SERVICES. (#45)

1 A. I will respond only to (D). Memphis Networx will be providing its own billing
2 system and will bear all costs associated with the billing system.

3 Q. REGARDING MEMPHIS NETWORX'S BALANCE SHEET FOR THE
4 YEAR ENDED DECEMBER 31, 1999:

5 (A) PLEASE EXPLAIN WHY THE THREE EQUITY AMOUNTS DO
6 NOT ADD UP TO "TOTAL EQUITY" OF \$(954,645).

7 (B) THE BALANCE SHEET SHOWS "DEPOSITS" OF \$70,509.
8 PLEASE EXPLAIN WHAT THESE DEPOSITS ARE FOR. (#49)

9 A. The balance sheet initially provided to MLGW was preliminary in
10 nature and had not been reviewed or adjusted by the independent
11 auditors, Ernst and Young. The Draft of the Balance Sheet from the
12 auditors is attached as Confidential Exhibit 49.

13 Q. IN LIGHT OF THE AMENDMENT TO THE APPLICATION AND
14 CHANGE IN BUSINESS PLANS, DOES MLGW NEED TO REVISE
15 THEIR PROJECTED FINANCIAL STATEMENTS? (#50)


16 A. Only Memphis Networx has submitted projected financial statements,
17 therefore I assume the question should ask whether Memphis Networx will
18 be revising their statements. There has been no significant change in
19 Memphis Networx business plans since the overall strategy was to be a
20 wholesaler of telecommunications, video and data services. Therefore, the
21 projected financial statements are still applicable.

22 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

23 A. Yes.


1
2 VERIFICATION

3 I, Ward Huddleston, Jr. declare under penalty of perjury that I am
4 authorized by Memphis Networx, LLC to testify on its behalf, that I have caused
5 the foregoing written testimony to be prepared on my behalf, that I have read the
6 foregoing testimony and that the statements contained therein are true and correct
7 to the best of my knowledge, information and belief.

8
9 
10 Ward Huddleston, Jr.
11 Chief Manager
12 Memphis Networx, LLC
13
14

15 STATE OF TENNESSEE)
16)
17 COUNTY OF SHELBY)
18

19 Sworn to and subscribed before me this 9th day of May, 2000.
20

21 
22 Notary Public
23 My Commission Expires: 11/31/2004
24
25
26

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**
3
4

5 IN RE: APPLICATION OF MEMPHIS)
6 NETWORKX, LLC FOR A CERTIFICATE OF)
7 PUBLIC CONVENIENCE AND)
8 NECESSITY TO PROVIDE INTRASTATE)
9 TELECOMMUNICATIONS SERVICES)
10 AND JOINT PETITION OF MEMPHIS)
11 LIGHT GAS AND WATER DIVISION,)
12 A DIVISION OF THE CITY OF MEMPHIS,)
13 TENNESSEE ("MLGW") AND A&L)
14 NETWORKS-TENNESSEE, LLC ("A&L"))
15 FOR APPROVAL OF AGREEMENT)
16 BETWEEN MLGW AND A&L REGARDING)
17 JOINT OWNERSHIP OF MEMPHIS)
18 NETWORKX, LLC)
19
20

DOCKET NO. 99-00909

21 **PRE-FILED TESTIMONY OF GEORGE ALEXANDER LOWE, II**
22 **ON BEHALF OF A&L NETWORKS**
23

24 **Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE**
25 **AND BUSINESS ADDRESS.**
26

27 A. My name is George Alexander Lowe, II. I am the President of A&L
28 Underground, Inc. and Manager of Aptus Networks, LLC and A&L Networks
29 – Tennessee, LLC. My business address is 14700 West 107th Street, Lenexa,
30 Kansas 66215.
31

32 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS DOCKET?**

33 A. No.
34

35 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

36 A. To respond to portions of the data requests concerning the Amendment to the
37 Application.
38

1 Q. THE OPERATING AGREEMENT (SECTION 9.1(D)) CONTEMPLATES
2 A TOTAL AGGREGATE OF CAPITAL CONTRIBUTIONS TO
3 MEMPHIS NETWORK TO BE APPROXIMATELY \$30,000,000.
4 APPROXIMATELY \$14,000,000 SHOULD BE PROVIDED BY A&L.
5 HOW DOES A&L NETWORKS INTEND TO PROVIDE THE CAPITAL
6 THEY HAVE COMMITTED TO INVEST? PLEASE IDENTIFY ALL
7 COMMITTED SOURCES OF CAPITAL A&L NETWORKS INTENDS
8 TO USE IN FULFILLING ITS INVESTMENT OBLIGATIONS IN THE
9 JOINT VENTURE WITH MLGW AND PROVIDE DOCUMENTS
10 SHOWING THAT THIS FUNDING IS AVAILABLE. (#15)
11

12 A. Section 9(d) of the Operating Agreement contemplates that "the aggregate of
13 all Capital Contributions [to Memphis Networkx] will be approximately \$30
14 million." These contributions will be needed in three increments of
15 approximately \$10 million per year, beginning in the year 2000. A&L's share
16 of these contributions will be approximately \$4.67 million per year. To date,
17 A&L has already contributed approximately \$2.1 million to Memphis
18 Networkx, leaving only \$2.6 million to fulfill its initial increment of
19 contributed capital.
20

21 In addition, A&L intends to raise up to \$15 million through a private offering
22 of Ownership Interests to accredited investors. From these funds, A&L will
23 make periodic capital contributions to Memphis Networkx, as needed. A&L is
24 ready to proceed with the offering, subject to updating its private placement
25 memorandum to include the most recent developments in the regulatory
26 proceeding, and subject to obtaining an order from the Tennessee Regulatory
27 Authority granting in material respects the relief requested in the
28 Application and Joint Petition.
29

30 A&L has delayed its offering pending the decision of the TRA, rather than
31 making its offering subject to a future decision of the TRA, in part: (i) to avoid
32 the need to update prospective investors throughout the offering process of
33 continual changes in the status of the regulatory proceeding; (ii) to avoid
34 holding investor deposits a prolonged period as the regulatory proceeding
35 unfolds; and (iii) to make the offering more attractive to investors, and,
36 therefore, to improve the terms and conditions of the offering for A&L.
37
38

39 Q. ACCORDING TO A LETTER (PUBLIC RECORD BATE STAMP WS
40 0768), WRITTEN TO LARRY THOMPSON, SENIOR VICE
41 PRESIDENT OF OPERATIONS-MLGW AND WADE STINSON, VICE
42 PRESIDENT OF CONSTRUCTION AND MAINTENANCE-MLGW BY
43 ALEX LOWE OF A&L UNDERGROUND, MR. LOWE CONFIRMS THE
44 START OF INSTALLATION OF CONDUIT APPROVED BY MLGW

1 DURING THE WEEK OF JUNE 1, 1999. THIS LETTER INDICATES
2 THE CONDUIT WOULD BE OWNED BY A&L NETWORKS, LLC
3 UNTIL TRANSFERRED TO MEMPHIS NETWORKX.

4 A. WAS THE CONDUIT INSTALLED?

5
6 B. WHO OWNS THE RIGHTS OF WAY WHERE THE CONDUIT
7 WAS INSTALLED?

8
9 C. WHO PAID FOR THE INSTALLATION?

10
11 D. WHO OWNED THE CONDUIT FOLLOWING INSTALLATION?

12
13 E. WHO OWNS THE CONDUIT NOW?

14
15 F. HAS ANY TYPE OF TELECOMMUNICATIONS FACILITY BEEN
16 PLACED IN THIS CONDUIT?

17
18 G. WHERE IS THE CONDUIT LOCATED?

19
20 H. DID A&L PAY MLGW ANYTHING FOR THIS CONDUIT? (#16)

21
22 A. A. Yes, the referenced conduit was installed. As stated in Wade Stinson's pre-
23 filed testimony, "empty conduit tubing was installed by A&L Underground,
24 Inc. while trenches were open during a construction project for installation of
25 utilities in various subdivisions". The conduit was installed by A&L
26 Underground, Inc. "at its own expense and risk" and "Memphis Networkx is
27 not committed to buy or lease this conduit tubing".

28
29 B. The conduit was installed in new subdivision multi-purpose utility
30 easements that have been or will be conveyed or dedicated to the appropriate
31 municipality.

32
33 C. A&L Underground, Inc. paid for the installation of conduit (see item A).

34
35 D. A&L Underground, Inc.

36
37 E. A&L Underground, Inc. still owns all conduit with the exception of one
38 subdivision (Barry Farms), where A&L Underground has sold its conduit to
39 BellSouth.

40
41 F. No telecommunications facilities have been placed in the conduit that
42 A&L Underground, Inc. currently owns. On information and belief,
43 BellSouth has deployed telecommunications facilities in the conduit that it
44 purchased from A&L Underground, Inc. in the Barry Farms subdivision.

1 A&L Underground, Inc. is engaged in discussions with Bell South and Time
2 Warner about possible lease or purchase of this conduit in additional
3 subdivisions for the installation of their telecommunications facilities.
4

5 G. This conduit is located in utility trenches within 35 new subdivisions that
6 were developed throughout Shelby County during 1999. (See copies of these
7 subdivision maps attached in Exhibit 16.)
8

9 H. No, A&L Underground, Inc. paid for the materials and installation cost of
10 this conduit. A&L Underground, Inc. has not made payments to MLGW for
11 this conduit since MLGW incurred no expense for the conduit installation.
12 However, per verbal agreement, if A&L Underground, Inc. sells or leases this
13 conduit, proceeds above the cost of material will be shared equally between
14 MLGW and A&L Underground, Inc.
15

16
17 **Q. DID YOU RECEIVE A RESPONSE TO THE LETTER MENTIONED IN**
18 **DATA REQUEST #16? IF SO, WHAT WAS THE SUBSTANCE OF THE**
19 **RESPONSE?**
20

21 A. Yes. Larry Thompson called me and informed me that Memphis Networkx
22 would be under no obligation to buy any conduit from A&L.
23

24 **Q. DOES A&L UNDERGROUND OR ANY AFFILIATE PRESENTLY OWN**
25 **ANY INSTALLED CONDUIT OR RIGHTS-OF-WAY THAT WILL**
26 **EVENTUALLY BE USED BY, TRANSFERRED OR SOLD TO MLGW**
27 **OR MEMPHIS NETWORKX, LLC WITHIN THE NEXT 3 YEARS? IF SO,**
28 **PLEASE EXPLAIN HOW THE PRICE OF THE CONDUIT OR**
29 **RIGHTS-OF-WAY WILL BE DETERMINED. (#17)**
30

31 A. A&L Underground, Inc. owns conduit that could be sold to Memphis
32 Networkx, as well as any other interested utility, including
33 telecommunications providers. The conduit will be sold at a competitive
34 market price as negotiated by A&L Underground, Inc., based on material
35 price, labor installation price, MLGW joint use fee and profit. Some
36 referenced conduit has already been sold to BellSouth under these conditions
37 and is available to be sold to any willing buyer. Discussions with Time
38 Warner are underway.
39

40 **Q. ON APRIL 14, 2000, TIME WARNER FILED A MOTION FOR ORDER**
41 **TO ALLOW ADDITIONAL DISCOVERY AND TO AMEND**
42 **PROCEDURAL SCHEDULE. ATTACHED TO THAT FILING WAS AN**
43 **EXHIBIT 11 THAT LISTS SEVERAL LOCATIONS WHERE A&L**
44 **UNDERGROUND ALLEGEDLY COMPLETED PLACING**


1 APPROXIMATELY 34 MILES OF INNER DUCT CAPABLE OF
2 HOUSING FIBER OPTIC CABLE. WAS THIS CONSTRUCTION
3 UNDERTAKEN BY MLGW AND A&L UNDERGROUND UNDER THE
4 CONTRACT MENTIONED IN ITEM #26 ABOVE? IF NOT, PLEASE
5 PROVIDE DETAILS OF THE WORK THAT WAS DONE AND
6 WHETHER A&L UNDERGROUND WAS PAID BY MLGW TO
7 UNDERTAKE AND COMPLETE THE WORK. (#28)
8

9 A. No. Information regarding this is contained in the response to #16 above.
10

11 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

12 A. Yes.

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George A. Lowe, II
Manager
A&L Networks – Tennessee, LLC

Sworn to and subscribed before me this 9th day of May, 2000.

Robyn DeMay
Notary Public
My Commission Expires: 4-2-2003

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**
3
4

5 IN RE: APPLICATION OF MEMPHIS)
6 NETWORK, LLC FOR A CERTIFICATE OF)
7 PUBLIC CONVENIENCE AND)
8 NECESSITY TO PROVIDE INTRASTATE)
9 TELECOMMUNICATIONS SERVICES)
10 AND JOINT PETITION OF MEMPHIS)
11 LIGHT GAS AND WATER DIVISION,)
12 A DIVISION OF THE CITY OF MEMPHIS,)
13 TENNESSEE ("MLGW") AND A&L)
14 NETWORKS-TENNESSEE, LLC ("A&L"))
15 FOR APPROVAL OF AGREEMENT)
16 BETWEEN MLGW AND A&L REGARDING)
17 JOINT OWNERSHIP OF MEMPHIS)
18 NETWORK, LLC)

DOCKET NO. 99-00909

19
20
21 **PRE-FILED SUPPLEMENTAL TESTIMONY OF**
22 **J. MAXWELL WILLIAMS ON BEHALF OF MLGW**
23

24 **Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE**
25 **AND BUSINESS ADDRESS.**
26

27 **A. My name is J. Maxwell Williams. I am Vice President and General Counsel**
28 **for Memphis Light Gas & Water Division, a Division of the City of Memphis,**
29 **Tennessee. My business address is Memphis Light Gas & Water Division,**
30 **220 South Main Street, Memphis, Tennessee 38103.**
31

32 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS DOCKET?**

33 **A. Yes.**
34

35 **Q. PLEASE PROVIDE A DETAILED EXPLANATION OF WHY THE**
36 **APPLICANT AND JOINT PETITIONERS BELIEVE THAT THE**
37 **NEGOTIATION, RENEGOTIATION OF POLE ATTACHMENT**
38 **AGREEMENTS BETWEEN MLGW AND ONE OR MORE OF THE**
39 **INTERVENORS MENTIONED IN SPECIFIC CONDITION #8,**
40 **SUPPORTS THEIR PETITION FOR A CCN TO OFFER**

1 TELECOMMUNICATIONS SERVICES IN TENNESSEE. PROVIDE
2 ANY DOCUMENTATION OR SUPPORTING EVIDENCE TO
3 SUPPORT THIS EXPLANATION. (#7)
4
5

6 A. The matters regarding negotiation of pole attachment agreements contained
7 in condition #8 of the Settlement Agreement are not related to issues in this
8 docket. As stated in the Explanation of Settlement Agreement, some of the
9 terms are not intended to be conditions on the certificate granted by the TRA,
10 but contractual agreements between the parties. In the interest of full
11 disclosure, the parties filed the full terms of their settlement agreement.
12

13 Q. PLEASE PROVIDE A DETAILED EXPLANATION OF WHY THE
14 APPLICANT AND JOINT PETITIONERS BELIEVE THE
15 INTERVENORS SEEKING OR NOT SEEKING JUDICIAL RELIEF
16 MENTIONED IN SPECIFIC CONDITION #9, SUPPORTS THEIR
17 PETITION FOR A CCN TO OFFER TELECOMMUNICATIONS
18 SERVICES IN TENNESSEE. PROVIDE ANY DOCUMENTATION OR
19 SUPPORTING EVIDENCE TO SUPPORT THIS EXPLANATION. (#8)
20

21 A. The intervenors' agreement not to seek judicial relief will facilitate bringing
22 finality to the proceedings and facilitate the Applicant's entry in the market
23 without the uncertainty of protracted proceedings.
24

25 Q. PLEASE PROVIDE A DETAILED EXPLANATION OF WHY THE
26 APPLICANT AND JOINT PETITIONERS BELIEVE THE PENDING
27 LITIGATION MENTIONED IN SPECIFIC CONDITION #10,
28 SUPPORTS THEIR PETITION FOR A CCN TO OFFER
29 TELECOMMUNICATIONS SERVICES IN TENNESSEE. PROVIDE
30 ANY DOCUMENTATION OR SUPPORTING EVIDENCE TO
31 SUPPORT THIS EXPLANATION. (#9)
32

33 A. Condition #10 is a contractual provision that is not subject to the TRA's
34 jurisdiction and is not intended to be a condition of granting the requested
35 authority to the Applicant. As stated in its Explanation to the Settlement
36 Agreement, it was disclosed in the interest of providing full disclosure of the
37 settlement agreement to the TRA.
38

39 Q. PLEASE PROVIDE A DETAILED EXPLANATION OF WHY THE
40 APPLICANT AND JOINT PETITIONERS BELIEVE THAT
41 PREVENTING COMPETITORS FROM SEEKING TO
42 LEGISLATIVELY MODIFY MUNICIPAL AUTHORITY TO
43 PARTICIPATE IN TELECOMMUNICATIONS ACTIVITIES OR JOINT
44 VENTURES, MENTIONED IN SPECIFIC CONDITION #11,

1 **SUPPORTS THEIR PETITION FOR A CCN TO OFFER**
2 **TELECOMMUNICATIONS SERVICES IN TENNESSEE. PROVIDE**
3 **ANY DOCUMENTATION OR SUPPORTING EVIDENCE TO**
4 **SUPPORT THIS EXPLANATION. (#10)**
5

6 **A.** Condition #11 is a contractual provision that is not subject to the TRA's
7 jurisdiction and is not intended to be a condition of granting the requested
8 authority to the Applicant. As stated in the Explanation of the Settlement
9 Agreement, it was disclosed in the interest of providing full disclosure of the
10 settlement agreement to the TRA. Certain intervenors lobbied against the
11 passage of T.C.A. § 7-52-103 (d), the statute which specifically authorizes a
12 municipal electric utility to enter a business venture with a private company
13 for the provision of telecommunications services. On April 6, 2000, an
14 amendment was introduced to repeal T.C.A. § 7-52-103 (d), however the bill
15 was taken off notice in Senate committee. The provision supports the
16 petition for a CCN by curtailing efforts to repeal statutory authority for the
17 joint venture.
18

19
20 **Q.** **ARTICLE 3.1 OF THE OPERATING AGREEMENT LISTS THE**
21 **INITIAL MEMBERS OF MEMPHIS NETWORK AS MLGW AND A&L.**
22 **DOES MLGW, AS USED IN THE OPERATING AGREEMENT, MEAN**
23 **THE TELECOMMUNICATIONS DIVISION OF MLGW? (#11)**
24

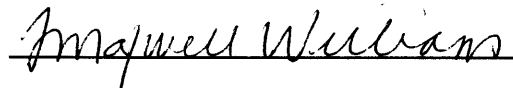
25
26 **A.** Yes. While Section 1.26 of the Operating Agreement defines "MLGW" as
27 "Memphis Light, Gas & Water Division, a Division of the City of Memphis,"
28 Section 14.8 of the Operating Agreement limits the obligations of MLGW
29 under the Operating Agreement to its Telecommunications Division.
30 Therefore, "MLGW" as used in the Operating Agreement means the
31 Telecommunications Division of MLGW.
32

33 **Q.** **DOES THAT CONCLUDE YOUR TESTIMONY?**

34 **A.** Yes.

VERIFICATION

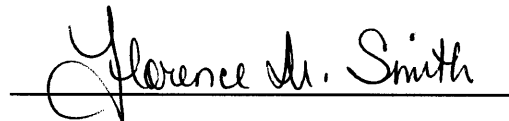
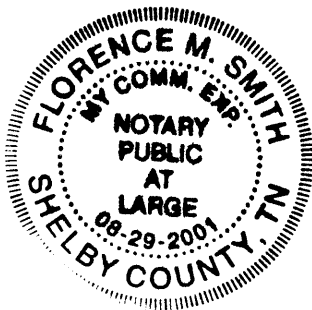
I, J. Maxwell Williams, declare under penalty of perjury that I am authorized by Memphis Light Gas & Water Division to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.



J. Maxwell Williams
Vice President and General Counsel
Memphis Light Gas Water Division

STATE OF TENNESSEE)
COUNTY OF SHELBY)

Sworn to and subscribed before me this 10th day of May,
2000.



Notary Public MY COMMISSION EXPIRES AUG. 29, 2001
My Commission Expires: _____

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**
3

4 IN RE: APPLICATION OF MEMPHIS)
5 NETWORK, LLC FOR A CERTIFICATE OF)
6 PUBLIC CONVENIENCE AND)
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16 JOINT OWNERSHIP OF MEMPHIS)
17 NETWORK, LLC)
18
19

DOCKET NO. 99-00909

20 **PRE-FILED SUPPLEMENTAL TESTIMONY OF**
21 **WADE STINSON ON BEHALF OF MLGW**
22

23 **Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE**
24 **AND BUSINESS ADDRESS.**
25

26 **A. My name is Wade Stinson. I am the Vice President of Construction and**
27 **Maintenance at Memphis Light Gas and Water Division, a Division of the**
28 **City of Memphis, Tennessee. My business address is Memphis Light Gas &**
29 **Water Division, 220 South Main Street, Memphis, Tennessee 38103.**
30

31 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS DOCKET?**

32 **A. Yes.**

33 **Q. PLEASE PROVIDE A DETAILED DEFINITION OF THE TERM**
34 **"UNDER SERVED" CUSTOMERS MENTIONED IN SPECIFIC**
35 **CONDITION #6 OF THE AMENDMENT TO THE APPLICATION AND**
36 **HOW THE DEFINITION AND TERM APPLY TO**
37 **TELECOMMUNICATIONS SERVICES OFFERED TO THE PUBLIC IN**
38 **TENNESSEE. (#6)**
39

1 A. One of the principal objectives of Memphis Networkx is to serve all of Shelby
2 County, except those areas served by incumbent LECs with less than 100,000
3 access lines. Whereas most of the recent telecommunications entrants have
4 concentrated on the heavily commercial districts of the community, Memphis
5 Networkx plans to connect to all BellSouth central offices thus providing
6 greater capacity and the latest technology throughout the County.
7 Associated with this, Memphis Networkx and MLGW in particular are
8 committed to seeing that lower income parts of the community have the
9 opportunity to benefit from such proximity to have access to offerings similar
10 to more affluent parts of the community and at affordable prices. We believe
11 competition facilitated by the services from Memphis Networkx will
12 accomplish that goal. In the event that it does not, there is an interest in
13 providing retail services to any customers that do not have such access. The
14 Pre-filed Supplemental Testimony of Ward Huddleston further addresses this
15 question.
16

17 Q. TENNESSEE CODE ANNOTATED §7-52-405(1) STATES THAT A
18 MUNICIPALITY SHALL ALLOCATE TO THE COSTS OF PROVIDING
19 SERVICES AUTHORIZED BY §7-52-401, AN AMOUNT FOR
20 ATTACHMENTS TO POLES OWNED BY THE MUNICIPALITY A
21 RATE EQUAL TO THE HIGHEST RATE CHARGED BY THE
22 MUNICIPALITY TO ANY OTHER PERSON OR ENTITY FOR
23 COMPARABLE POLE ATTACHMENTS. WHAT ARE THE
24 APPLICANT'S AND JOINT PETITIONER'S POSITIONS REGARDING
25 THE ALLOCATION OF COSTS FOR OCCUPANCY AND RENTAL OR
26 CONDUIT BELONGING TO MLGW BY MEMPHIS NETWORKX? (#12)
27

28 A. Although T.C.A. § 7-52-405(1) does not apply to occupancy and rental of
29 conduit, MLGW will charge Memphis Networkx the highest rate that MLGW
30 charges to any other person for comparable conduit occupancy or rental.
31 Currently, that rate is \$2.64 per foot of occupied conduit per year plus dark
32 fiber requirements, which is the same amount charged NextLink and
33 Hyperion Communications of Tennessee (also known as Adelphia) for their
34 underground routes. MLGW has entered into two conduit rental agreements
35 for very short conduit routes at higher rates of \$3.95 per foot, but one of those
36 carriers (MCImetro) never installed underground facilities under that
37 contract. Because the other contract (with WorldCom) is for a very short
38 route, MLGW does not consider this contract to be comparable to the
39 anticipated needs of Memphis Networkx; because that contract does not
40 require the dedication of any dark fiber to MLGW, MLGW believes that the
41 total compensation is actually less than the compensation under the Nextlink
42 and Hyperion contracts.
43

1 Q. HAVE ANY POLE ATTACHMENT, CONDUIT OCCUPANCY AND/OR
2 FIBER OPTIC AGREEMENTS BEEN ENTERED INTO BETWEEN
3 MEMPHIS NETWORK AND MLGW? IF SO, PLEASE PROVIDE
4 THEM. IF NOT, WILL THE APPLICANT AND JOINT PETITIONERS
5 BE WILLING TO MAKE THOSE AGREEMENTS A PART OF THE
6 OPERATING AGREEMENT IF AND WHEN THEY ARE MADE? (#13)
7

8 A. No pole attachment, conduit occupancy or fiber optic agreements have been
9 entered into between MLGW and Memphis Network. The applicant and joint
10 petitioners submit that any such agreement should be made as a separate
11 agreement, rather than as an amendment to the Operating Agreement, since
12 a limited liability company operating agreement is similar to bylaws of a
13 corporation and is not typically used to document contracts between the
14 limited liability company and one of its members. MLGW has submitted a
15 pole attachment agreement to Memphis Network that contains the same
16 terms as the pole attachment agreement recently executed between MLGW
17 and Hyperion Communications of Tennessee. That agreement has not been
18 executed, but the applicants and joint petitioners are willing to file the final
19 agreement with the Authority upon execution.
20

21 Q. HAS ANY INNER DUCT OR ANY OTHER STRUCTURE CAPABLE OF
22 SUPPORTING TELECOMMUNICATIONS FACILITIES OF ANY KIND
23 EVER BEEN INSTALLED BY MLGW IN OR ADJACENT TO ST. JUDE
24 HOSPITAL AND/OR THE HOUSING DEVELOPMENTS OF
25 JEFFERSON SQUARE, R.Q. VENSON OR BARRY HOLMES? IF SO,
26 PLEASE DESCRIBE IN DETAIL THE TYPE OF STRUCTURE OR
27 FACILITY, WHEN IT WAS INSTALLED, WHO INSTALLED IT, THE
28 OWNER, ITS PRESENT STATUS (WORKING, OCCUPIED, VACANT
29 OR SPARE), WHETHER IT IS SUBJECT TO ANY CONTRACTS OR
30 LEASE AGREEMENTS WITH OTHER PARTIES AND WHO THOSE
31 PARTIES ARE. (#14)
32

33 A. Inner duct has not been installed around the four locations in question.
34 MLGW has not installed any facilities for the purpose of providing or
35 supporting telecommunications service to these four areas, but much of its
36 electric infrastructure in these areas could support telecommunications
37 services if all applicable safety and engineering requirements are met. This
38 electric infrastructure in and around the four locations was installed over
39 many years and is owned by MLGW, and some of the conduit even predates
40 the formation of MLGW.
41

42 While the status of a specific pole or manhole can only be determined with
43 certainty by a field inspection (which time did not permit), to the best of
44 MLGW's knowledge, conduit in the immediate vicinity of the four locations is

1 not occupied by any telecommunications provider. A general description of
2 MLGW's electric system facilities in each of the requested areas follows:
3

4 St. Jude: St. Jude is served primarily by an underground electric system;
5 there is minimal excess conduit around the hospital and a few poles.
6

7 Jefferson Square (741 Adams Street): There are distribution poles on all
8 streets adjacent to Jefferson Square and no conduit other than underground
9 dips from the overhead.
10

11 R.Q. Venson (439 Beale Street): R.Q. Venson is served by the underground
12 downtown networks.
13

14 Barry Homes (NW Corner of Lauderdale and Exchange Streets): Barry
15 Homes is served by conduit; there are some poles in the area.
16

17 **Q. ACCORDING TO A LETTER (PUBLIC RECORD BATE STAMP WS**
18 **0768), WRITTEN TO LARRY THOMPSON, SENIOR VICE**
19 **PRESIDENT OF OPERATIONS-MLGW AND WADE STINSON, VICE**
20 **PRESIDENT OF CONSTRUCTION AND MAINTENANCE-MLGW BY**
21 **ALEX LOWE OF A&L UNDERGROUND, MR. LOWE CONFIRMS THE**
22 **START OF INSTALLATION OF CONDUIT APPROVED BY MLGW**
23 **DURING THE WEEK OF JUNE 1, 1999. THIS LETTER INDICATES**
24 **THE CONDUIT WOULD BE OWNED BY A&L NETWORKS, LLC**
25 **UNTIL TRANSFERRED TO MEMPHIS NETWORK.**

26 **A. WAS THE CONDUIT INSTALLED?**
27

28 **B. WHO OWNS THE RIGHTS OF WAY WHERE THE CONDUIT**
29 **WAS INSTALLED?**
30

31 **C. WHO PAID FOR THE INSTALLATION?**
32

33 **D. WHO OWNED THE CONDUIT FOLLOWING INSTALLATION?**
34

35 **E. WHO OWNS THE CONDUIT NOW?**
36

37 **F. HAS ANY TYPE OF TELECOMMUNICATIONS FACILITY BEEN**
38 **PLACED IN THIS CONDUIT?**
39

40 **G. WHERE IS THE CONDUIT LOCATED?**
41

42 **H. DID A&L PAY MLGW ANYTHING FOR THIS CONDUIT? (#16)**
43
44

- 1 A. A. Yes, the referenced conduit was installed. As stated in my pre-filed
2 testimony, "empty conduit tubing was installed by A&L Underground while
3 trenches were open during a construction project for installation of utilities in
4 various subdivisions". The conduit was installed by A&L Underground "at its
5 own expense and risk" and "Memphis Networx is not committed to buy or
6 lease this conduit tubing".
7
- 8 B. The conduit was installed in new subdivision multi-purpose utility
9 easements that have been or will be conveyed or dedicated to the appropriate
10 municipality.
11
- 12 C. A&L Underground paid for the installation of conduit (see item A).
13
- 14 D. A&L Underground.
15
- 16 E. A&L Underground still owns all conduit with the exception of one
17 subdivision (Barry Farms), where A&L Underground has sold its conduit to
18 BellSouth.
19
- 20 F. No telecommunications facilities have been placed in the conduit that
21 A&L Underground currently owns. On information and belief, BellSouth has
22 deployed telecommunications facilities in the conduit that it purchased from
23 A&L in the Barry Farms subdivision. A&L Underground is engaged in
24 discussions with Bell South and Time Warner about possible lease or
25 purchase of this conduit in additional subdivisions for the installation of
26 their telecommunications facilities.
27
- 28 G. This conduit is located in utility trenches within 35 new subdivisions that
29 were developed throughout Shelby County during 1999. Copies of these
30 subdivision maps are attached as Exhibit 16.
31
- 32 H. No, A&L Underground paid for the materials and installation cost of this
33 conduit. A&L Underground has not made payments to MLGW for this
34 conduit since MLGW incurred no expense for the conduit installation.
35 However, per verbal agreement, if A&L Underground sells or leases this
36 conduit, proceeds above the cost of material will be shared equally between
37 MLGW and A&L Underground.
38
39
- 40 **Q. WHY DID MLGW ALLOW A&L TO INSTALL THIS CONDUIT?**
41
- 42 A. It was part of an ongoing effort with other utilities, particularly BellSouth, to
43 facilitate installation of all utilities in a manner to reduce damage during
44 both subsequent installation or ongoing maintenance activities.

1
2 **Q. DOES A&L UNDERGROUND OR ANY AFFILIATE PRESENTLY OWN**
3 **ANY INSTALLED CONDUIT OR RIGHTS-OF-WAY THAT WILL**
4 **EVENTUALLY BE USED BY, TRANSFERRED OR SOLD TO MLGW**
5 **OR MEMPHIS NETWORKX, LLC WITHIN THE NEXT 3 YEARS? IF SO,**
6 **PLEASE EXPLAIN HOW THE PRICE OF THE CONDUIT OR**
7 **RIGHTS-OF-WAY WILL BE DETERMINED. (#17)**
8

9 **A.** No, MLGW will not use, acquire, or buy any installed conduit or rights-if-way
10 from A&L Underground or any affiliate within the next three years.
11

12 **Q. DOES MLGW OWN ANY INSTALLED CONDUIT OR CONDUIT IN**
13 **THE PROCESS OF BEING INSTALLED OR RIGHTS-OF-WAY THAT**
14 **WILL BE USED BY, SOLD OR TRANSFERRED TO MEMPHIS**
15 **NETWORKX, LLC WITHIN THE NEXT 3 YEARS? IF SO, PLEASE**
16 **EXPLAIN HOW THE PRICE WILL BE DETERMINED. (#18)**
17

18 **A.** MLGW has no plans nor any intention to sell or transfer ownership of any of
19 its conduit to Memphis Networkx within the next three years. MLGW may
20 permit Memphis Networkx to use MLGW's conduit on the terms and
21 conditions described in response to Request No. 12 – the highest rate
22 charged for comparable underground installations, which is currently \$2.64
23 per foot of conduit occupied.
24

25 **Q. WILL MEMPHIS NETWORKX, LLC USE ANY ASSETS OF MLGW**
26 **OTHER THAN CONDUIT? IF SO, PROVIDE A DETAILED**
27 **DESCRIPTION OF SUCH ASSETS AND AN EXPLANATION OF HOW**
28 **MEMPHIS NETWORKX WILL BE CHARGED FOR SUCH USE. (#20)**
29

30 **A.** The primary assets of MLGW that Memphis Networkx anticipates using are
31 MLGW's overhead distribution poles and transmission towers and MLGW's
32 conduit, and Memphis Networkx will be charged the highest rate that MLGW
33 charges other carriers for comparable uses. Memphis Networkx may also
34 enter into one or more of the following transactions with MLGW, at the
35 stated charges:
36

37 Ground Leases or Licenses: Ground leases or licenses of MLGW property for
38 the installation of telecommunications equipment, at a charge equal to \$1 per
39 square foot per month with a minimum monthly fee of \$300.
40

41 Abandoned Gas Mains: Use of abandoned gas mains for underground
42 installations (instead of conduit and available to any interested
43 telecommunications carrier), at a charge equal to MLGW's charge for conduit.
44

1 Other Assets: Any other asset that is made available to Memphis Networkx
2 will also be made available to any interested telecommunications carrier, at
3 comparable rates to all parties.
4

5 **Q. WILL MEMPHIS NETWORKX, LLC USE MLGW'S ENERGY CONTROL**
6 **SYSTEM (ECS) OR ANY COMPONENT OF SUCH SYSTEM? IF SO,**
7 **WILL MEMPHIS NETWORKX BE CHARGED FOR SUCH USE AND**
8 **HOW WILL THOSE CHARGES BE DETERMINED? (#21)**
9

10 **A.** Memphis Networkx will not use MLGW's Energy Control System (also called
11 its SCADA system) or any component of it.
12

13 **Q. WILL MEMPHIS NETWORKX, LLC HAVE ACCESS TO THE**
14 **INVENTORY OR DATABASES OF MLGW'S FACILITIES? IF SO, DO**
15 **ANY OTHER UNAFFILIATED PROVIDERS HAVE SUCH ACCESS**
16 **AND HOW WILL MEMPHIS NETWORKX BE CHARGED FOR SUCH**
17 **ACCESS OR USE? (#22)**
18

19 **A.** Memphis Networkx will have the same access to information regarding
20 MLGW's facilities as other telecommunications carriers have now. This
21 information consists primarily of (1) maps of MLGW's electric distribution
22 and transmission system; (2) a tabular list of MLGW's water tanks and
23 communications towers; (3) a graphical depiction of the location of MLGW
24 water tanks and communications towers. MLGW's staff also responds to
25 specific requests of telecommunications carriers for other information
26 regarding MLGW's facilities. Because these information requests typically
27 lead to facilities rental arrangements between MLGW and the
28 telecommunications carrier, MLGW does not charge any other
29 telecommunications carrier for this type of information and will not charge
30 Memphis Networkx either.
31

32 More detailed information, such as reproductions of MLGW's electric
33 distribution and transmission maps, is available to telecommunications
34 carriers at MLGW's standard charges, and will be made available to
35 Memphis Networkx on the same terms.
36
37

38 **Q. THE POLE ATTACHMENT AND MASTER CONDUIT OCCUPANCY**
39 **AGREEMENT BETWEEN MLGW AND MCI METRO ACCESS AND**
40 **THE FIBER OPTIC AGREEMENT BETWEEN MLGW AND**
41 **NEXTLINK (FORMERLY CSI) BOTH SPECIFY THAT FIBERS WILL**
42 **BE MADE AVAILABLE TO MLGW BY NEXTLINK AND MCIMETRO**
43 **ACCESS FOR THE INTERNAL USE OF MLGW. DOES MLGW**
44 **INTEND TO ALLOW MEMPHIS NETWORKX TO USE ANY OF THESE**

1 FIBERS? IF SO, HOW WILL MEMPHIS NETWORK BE CHARGED
2 AND HOW WILL SUCH CHARGES BE DETERMINED? (#24)
3

4 A. No. The NextLink (City Signal) contract restricts MLGW to internal uses of
5 the six fibers and, even absent this restriction, all six fibers are needed for
6 MLGW's internal communications. MCImetro has never constructed any
7 fiber under the MLGW contract.
8

9 Q. THE FIBER OPTICS AGREEMENT BETWEEN HYPERION
10 COMMUNICATIONS OF TENNESSEE AND MLGW SPECIFIES THAT
11 SIX (6) OPTICAL FIBERS WILL BE MADE AVAILABLE TO MLGW
12 BY HYPERION BUT, DOES NOT APPEAR TO LIMIT THE USE OF
13 THESE FIBERS BY MLGW TO INTERNAL USE. DOES MLGW
14 INTEND TO ALLOW MEMPHIS NETWORK TO USE ANY OF THESE
15 FIBERS? IF SO, HOW WILL MEMPHIS NETWORK BE CHARGED
16 AND HOW WILL SUCH CHARGES BE DETERMINED? (#25)
17

18 A. No. MLGW has no plans to allow any telecommunications carrier, including
19 Memphis Network, to use the fibers that will be provided by Hyperion. If
20 MLGW were to subsequently determine that this fiber was excess to its
21 current and near-term future needs, MLGW would make the fiber available
22 to Memphis Network (and any other carrier) in accordance with the
23 parameters set forth in response to #20.
24

25 Q. ON PAGE 8 OF HIS PRE-FILED REBUTTAL TESTIMONY, MR.
26 WADE STINSON MENTIONS A CONTRACT THAT A&L
27 UNDERGROUND HAD WITH MLGW TO INSTALL GAS AND
28 UNDERGROUND ELECTRIC FACILITIES. PLEASE DESCRIBE IN
29 DETAIL THE WORK THAT WAS DONE, ALL LOCATIONS WHERE
30 THE WORK WAS PERFORMED AND WHETHER A&L
31 UNDERGROUND WAS PAID BY MLGW TO UNDERTAKE AND
32 COMPLETE THE WORK IN ACCORDANCE WITH THE CONTRACT.
33 PLEASE PROVIDE A COPY OF THIS CONTRACT. (#26)
34

35 A. A&L Underground currently has contract #10368 with MLGW for
36 installation of underground distribution systems, a copy of which is attached
37 in Exhibit 27. The contract was awarded to A&L Underground following a
38 competitive bid process. This contract was approved by MLGW's Board of
39 Commissioners on December 19, 1996, and is a one year contract with up to
40 four annual renewals. The Board of Commissioners approved the latest
41 renewal on December 2, 1999. This contract is for the installation and
42 renewal of natural gas distribution mains and associated facilities and
43 certain underground electric distribution facilities. Because of on-going
44 discussions with BellSouth and other telecommunications and similar

1 carriers about the possibility of a joint trench relationship, this contract also
2 addressed the installation of certain underground telecommunications
3 facilities, although none of this type work has been done to date. Work
4 pursuant to this contract was and is performed throughout MLGW's Shelby
5 County service territory in a vast number of locations. As of May 5, 2000,
6 MLGW has paid A&L Underground \$37,243,882.58 for work performed on
7 this contract since January 1, 1997. Attached in Exhibit 26 are copies of
8 computer printouts detailing all payments to A&L Underground since
9 January 1, 1997 (TRA staff confirmed that it was acceptable to only provide
10 payments since January, 1997 due to the difficulty in obtaining such data off
11 of our archives).
12

13 **Q. HOW LONG HAS A&L UNDERGROUND BEEN PERFORMING**
14 **CONTRACT WORK FOR MLGW AND WHAT IS THE TOTAL**
15 **AMOUNT TO DATE MLGW HAS PAID A&L UNDERGROUND SINCE**
16 **A&L FIRST STARTED PERFORMING WORK UNDER CONTRACT?**
17 **PLEASE PROVIDE A COPY OF ALL CONTRACTS THAT HAVE**
18 **BEEN EXECUTED BETWEEN MLGW AND A&L UNDERGROUND OR**
19 **ANY OF ITS SUBSIDIARIES. (#27)**
20

21 **A.** Since 1987, A&L Underground has had eight (8) separate contracts with
22 MLGW, although A&L Underground's work for MLGW has not been
23 continuous during that period of time. Copies of each master contract are
24 attached as Exhibit 27. The estimated amount paid by MLGW to A&L
25 Underground for all contracts to date (including the present contract) is
26 \$50,386,589.57. Listed below is a summary of each contract:
27

28 Contract #9739 – for construction of underground utility system. Approved by
29 Board on 12/3/87 and renewed through 1992. Estimated payments from
30 MLGW to A&L Underground of \$7,158,278.47.
31

32 Contract #9857 – for Arlington to Collierville 12"XXHP gas line. Approved by
33 Board on 7/20/89. Estimated payments from MLGW to A&L Underground of
34 \$1,681,632.
35

36 Contract #9854 – for Highway 72 to Winchester main extension. Approved by
37 Board on 9/21/89. Estimated payments from MLGW to A&L Underground of
38 \$352,444.02.
39

40 Contract #9926 – for directional controlled drilling. Approved by Board on
41 8/16/90. Estimated payments from MLGW to A&L Underground of \$673,285.
42

1 Contract #10002 – for Elvis Presley Blvd. bridges gas pipeline relocation.
2 Approved by Board on 7/18/91. Estimated payments from MLGW to A&L
3 Underground of \$115,346.
4

5 Contract #10114 – for trenchless construction of underground electric
6 distribution system. Approved by Board on 10/1/92. Estimated payments
7 from MLGW to A&L Underground of \$3,161,721.50.
8

9 Contract #10368 – the present contract with A&L Underground. Information
10 relative to this contract is included in the response to item 26.
11

12 **Q. ON APRIL 14, 2000, TIME WARNER FILED A MOTION FOR ORDER**
13 **TO ALLOW ADDITIONAL DISCOVERY AND TO AMEND**
14 **PROCEDURAL SCHEDULE. ATTACHED TO THAT FILING WAS AN**
15 **EXHIBIT 11 THAT LISTS SEVERAL LOCATIONS WHERE A&L**
16 **UNDERGROUND ALLEGEDLY COMPLETED PLACING**
17 **APPROXIMATELY 34 MILES OF INNER DUCT CAPABLE OF**
18 **HOUSING FIBER OPTIC CABLE. WAS THIS CONSTRUCTION**
19 **UNDERTAKEN BY MLGW AND A&L UNDERGROUND UNDER THE**
20 **CONTRACT MENTIONED IN ITEM #26 ABOVE? IF NOT, PLEASE**
21 **PROVIDE DETAILS OF THE WORK THAT WAS DONE AND**
22 **WHETHER A&L UNDERGROUND WAS PAID BY MLGW TO**
23 **UNDERTAKE AND COMPLETE THE WORK. (#28)**
24

25 **A. No. Information regarding this is contained in the response to #16 above.**
26

27 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**
28

29 **A. Yes.**
30

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I, Wade Stinson, declare under penalty of perjury that I am authorized by Memphis Light Gas & Water Division to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

**Wade Stinson, Vice President of
Construction and Maintenance of
Memphis Light Gas Water Division**

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Sworn to and subscribed before me this ____ day of _____, 2000.

Notary Public
My Commission Expires: _____

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**

3 **IN RE: APPLICATION OF MEMPHIS)**
4 **NETWORKX, LLC FOR A CERTIFICATE OF)**
5 **PUBLIC CONVENIENCE AND)**
6 **NECESSITY TO PROVIDE INTRASTATE)**
7 **TELECOMMUNICATIONS SERVICES)** **DOCKET NO. 99-00909**
8 **AND JOINT PETITION OF MEMPHIS)**
9 **LIGHT GAS AND WATER DIVISION,)**
10 **A DIVISION OF THE CITY OF MEMPHIS,)**
11 **TENNESSEE ("MLGW") AND A&L)**
12 **NETWORKS-TENNESSEE, LLC ("A&L"))**
13 **FOR APPROVAL OF AGREEMENT)**
14 **BETWEEN MLGW AND A&L REGARDING)**
15 **JOINT OWNERSHIP OF MEMPHIS)**
16 **NETWORKX, LLC)**

17
18
19 **PRE-FILED TESTIMONY OF MICHAEL D. WHITTEN**
20 **ON BEHALF OF MLGW**
21

22 **Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE**
23 **AND BUSINESS ADDRESS.**
24

25 **A. My name is Michael D. Whitten. I am the Internal Auditor of Memphis**
26 **Light, Gas and Water Division, a Division of the City of Memphis, Tennessee.**
27 **My business address is Memphis Light, Gas and Water Division, 220 South**
28 **Main Street, Memphis, Tennessee 38103.**
29
30

31 **Q. WHAT DOES YOUR POSITION WITH MLGW ENTAIL?**
32

33 **A. As Internal Auditor, I am the senior audit executive, reporting directly to the**
34 **CEO and the Board of Commissioners. I have a staff of 10 auditors and**
35 **clericals that report to me and perform internal audits, operational reviews,**
36 **and special projects as requested by the Executive Staff of MLGW. I also**
37 **function as a member of MLGW's Executive Staff, with financial and**
38 **business advisory duties to the CEO.**
39
40

41 **Q. WHAT IS YOUR ROLE WITH RESPECT TO MLGW'S**
42 **PARTICIPATION IN MEMPHIS NETWORKX?**
43

1 A. My role with Memphis Networkx is one of a business and financial advisor to
2 the CEO and Executive Staff of MLGW with regard to the formation of the
3 LLC and its ongoing structure and operations. I have no position within
4 Memphis Networkx, nor any authority over their operations. My role in the
5 review and oversight of Memphis Networkx is similar to duties I would
6 perform on any other business investment of MLGW, and in keeping with my
7 responsibilities as the senior internal audit executive.
8
9

10 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**
11

12 A. I have a BBA, cum laude in accountancy from the University of Memphis. I
13 have been a licensed CPA in Tennessee since 1977, and a CIA (certified
14 internal auditor) since May 1999. Additionally, I am licensed by
15 Kepner-Tregoe as a Process Consultant and instructor in their
16 Problem/Solving, Decision-Making technology.
17
18

19 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**
20

21 A. In my career, I have worked with a Big Five CPA firm, and have over 14
22 years of experience in corporate accounting, including a position as Chief
23 Accounting Officer and Assistant to the Secretary-Treasurer with a Fortune
24 100 food company. I have worked at MLGW for over 10 years, in positions as
25 Assistant to the Secretary-Treasurer, Data Security Officer, and currently as
26 General Auditor. I have taught Kepner-Tregoe LIC Classes to over 600
27 individuals, including business executives, professionals and PhD's.

28 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS DOCKET?**

29 A. No.

30 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

31 A. To respond to portions of the data requests concerning the certain cost
32 allocation accounting issues and the structure of MLGW's
33 Telecommunications Division.
34
35

36 **Q. HAVE ALL OF MLGW'S EXPENSES ASSOCIATED WITH THE**
37 **CREATIONS OF THE TELECOMMUNICATIONS DIVISION AND**
38 **MEMPHIS NETWORKX BEEN ASSIGNED TO THE**
39 **TELECOMMUNICATIONS DIVISION OF MLGW? PROVIDE A**
40 **SCHEDULE OF ALL SUCH EXPENSES INCLUDING ACCRUED**
41 **LEGAL EXPENSES AS OF APRIL 30, 2000. (#23)**

1
2
3 A. Yes. In fact, because MLGW has captured and accounted for expenses
4 incurred prior to the formation of its Telecommunications Division on August
5 19, 1999, MLGW believes that it has captured and accounted for more
6 expenses than it is legally required to capture.
7

8 MLGW has recorded all related expenses of the Telecommunications
9 Division, and its investment in the LLC in accordance with APB Opinion 18,
10 using the equity method of accounting. Full disclosure of the investment and
11 expenses are reflected in Footnote 8 which will appear in the audited
12 financial statements of MLGW for 12/31/1999 and which appeared in the
13 audited financial statements for the period ending 12/31/1998. A copy of the
14 footnote as it will appear in the financial statements and annual report is
15 attached as Exhibit 23-1. The expenses related to Telecommunications for
16 the fiscal periods 1/1/2000-4/30/2000 have been captured in our accounting
17 records, and will be included on a consistent basis in those monthly
18 statements when their preparation is complete. Completion of this internal
19 accounting statement process for the periods through 4/30/2000 is expected
20 by 6/20/2000.
21

22 Schedules of all expenses, including accrued legal expenses, as of April 30,
23 2000 are attached as Exhibit 23-2.
24

25 Q. PLEASE EXPLAIN IN DETAIL THE FUNCTIONS OF THE TELECOM
26 DIVISION PRIOR TO, DURING, AND AFTER THE FORMATION OF
27 MEMPHIS NETWORKX. (#29)
28
29

30 A. The Board of Commissioners formed the Telecommunications Division of
31 MLGW by Resolution dated August 19, 1999 (attached as Exhibit D to the
32 Joint Petition and Application of Memphis Networkx) as a subdivision of the
33 Electric Division. Contrary to its name, the Telecommunications Division
34 will not be providing any telecommunications services; it will not own any
35 telecommunications facilities or equipment; and it will not have any of its
36 own employees. All of those functions will be performed by Memphis
37 Networkx.
38

39 Instead, the Telecommunications Division serves two different functions: (1)
40 it functions as a control for the capture of investments in Memphis Networkx,
41 LLC, as prescribed by the equity method of accounting-- that is, it makes
42 MLGW's capital contribution to Memphis Networkx, it holds MLGW's
43 membership interest in Memphis Networkx, and it receives MLGW's
44 distributions from Memphis Networkx; and (2) it acts as an accounting entity

1 to capture any of MLGW's internal costs related to MLGW's involvement in
2 the formation and ownership of Memphis Networkx.
3

4 Separate charge codes have been established for the charging of specific costs
5 to the Telecommunications Division, and a fixed time distribution rate is in
6 place for allocation of time related to the less than 15 employees who, from
7 time to time, have had involvement in MLGW's participation in Memphis
8 Networkx prior to and during this proceeding. After successful completion of
9 the application process and receipt of the certificate of convenience and
10 necessity, the Telecommunications Division will function only as an
11 accounting entity to be used to record any properly allocable costs and to
12 record the appropriate portion of the net income or loss from the annual
13 operations of Memphis Networkx, as described in the operating agreement of
14 Memphis. After certification, MLGW's internal costs are anticipated to be
15 minimal, primarily comprised of the internal costs related to the cost of
16 MLGW's executives serving as Governors on the Board of Governors of
17 Memphis Networkx.
18

19 Attached as Exhibit 29 is an organizational chart showing the relationship
20 between MLGW's Electric Division, MLGW's Telecommunications Division,
21 and Memphis Networkx, and the various transactions involving the
22 Telecommunications Division. It is part of our accounting control process to
23 demonstrate a clear delineation between MLGW's Electric Division, MLGW's
24 Telecommunications Division, and Memphis Networkx, LLC.
25

26 **Q. HOW MANY EMPLOYEES ARE PRESENTLY EMPLOYED IN THE**
27 **TELECOM DIVISION? WILL ADDITIONAL EMPLOYEES BE HIRED**
28 **IN THE FUTURE? (#30)**
29

30 **A.** The Telecommunications Division currently has no full or part-time
31 employees. There are no plans to hire any such employees in the future.
32 Please see MLGW's discussion in Response No. 29 and in its Cost Allocation
33 Manual of the cost allocation process for MLGW employees that have been
34 involved with MLGW's participation in Memphis Networkx.
35

36 **Q. WHAT IS THE TOTAL ANNUAL PAYROLL OF THE TELECOM**
37 **DIVISION? (#31)**
38

39 **A.** As indicated in the response to Response No. 30, since there are no
40 employees, the Telecommunications Division has no separate, distinct
41 payroll. The only associated payroll costs are those allocated by the Cost
42 Allocation Manual procedures for those employees who have some periodic
43 involvement in MLGW's participation in Memphis Networkx. Again, following

1 certification, that involvement is expected to be minimal and limited to the
2 MLGW executives serving on the Memphis Network Board of Governors.
3

4 **Q. (A) WILL MLGW PROVIDE A PERIODIC "COST ALLOCATION**
5 **COMPLIANCE" AUDIT AS IT HAS INDICATED IT WOULD IN TRA**
6 **DATA REQUEST ITEM 2 DATED MARCH 23, 2000?**

7 **(B) WHAT AUDITING PROCEDURES, BOTH INTERNAL AND**
8 **EXTERNAL, HAVE BEEN OR WILL BE IMPLEMENTED TO ASSURE**
9 **COMPLIANCE WITH §7-52-401, ET SEQ.? (#37)**
10

11 **A. (A)** Yes. MLGW, upon successful completion of the application process
12 before TRA, will require its external audit firm (currently Deloitte-Touche) to
13 expand or modify its annual audit procedures to comply with the
14 requirements for a "cost allocation compliance" audit, including the issuance
15 of an opinion on such compliance.
16

17 (B) As a part of the 1999 annual audit, MLGW voluntarily captured all
18 applicable internal and invested costs related to the telecommunications
19 venture for disclosure in its annual report. The General Auditor had several
20 meetings to review the nature of the work performed by the external
21 auditors, and to discuss the appropriate disclosure for the audited figures. As
22 stated in my response to #23, a copy of this disclosure (i.e. Footnote 8) is
23 provided as Exhibit 23-1. On a going-forward basis, the Internal Audit staff
24 of MLGW will review the internal cost allocations made to our
25 Telecommunications Division in addition to the compliance audits referenced
26 in response to Part A of this Response.
27

28 MLGW's Internal Audit staff may also periodically review the receipts,
29 disbursements and other records of Memphis Network, in order to provide an
30 appropriate level of comfort to MLGW that Memphis Network is properly
31 accounting for these amounts. The Internal Audit department of MLGW will
32 not perform any internal audit work for the benefit of Memphis Network,
33 LLC. Further, Memphis Network has engaged the accounting firm of Ernst
34 and Young to perform annual audits for the periods 1999 and beyond. The
35 1999 audit of Memphis Network has just been completed.
36
37

38 **Q. (A) THE INTRODUCTION OF MLGW'S COST ALLOCATION**
39 **MANUAL (CAM) STATES THAT ITS ELECTRIC DIVISION HAS**
40 **SHARED WITH A&L NETWORKS-TN "PRIOR COSTS AND**
41 **SUBSEQUENT COSTS" AS DEFINED IN THE AGREEMENT DATED**
42 **NOVEMBER 8, 1999. PROVIDE THE TOTAL AMOUNT OF THESE**
43 **COSTS.**

1 (B) OF THIS TOTAL AMOUNT, HOW MUCH WILL BE REIMBURSED
2 TO MLGW?

3 (C) OF THIS TOTAL AMOUNT, HOW MUCH WILL BE REIMBURSED
4 TO A&L?

5 (D) ARE THESE COSTS ACCOUNTED FOR ON THE BOOKS OF THE
6 TELECOMMUNICATIONS DIVISION OR MEMPHIS NETWORK?
7 PROVIDE THE ACCOUNTS AND ACCOUNT DESCRIPTION USED
8 TO BOOK THESE COSTS. (#38)
9

10 A. Under the provisions of the Operating and Umbrella Agreements, MLGW has
11 agreed to fund approximately 50% of the operating expenses of Memphis
12 Networkx with the understanding that such funding constitutes an advance of
13 funds from the anticipated equity investment by each of the LLC members.
14 Upon successful completion of the TRA process, MLGW will invest
15 approximately \$5.3 million as initial equity capital, net of approximately \$2.2
16 million of Prior Costs and Interim Contributions that have been advanced by
17 MLGW under the provisions of the agreement. For MLGW, the settlement of
18 Prior Costs involved a total of \$1.3 million, and cash transfers to Memphis
19 Networkx in the following periods from 11/10/1999 through April 28, 2000
20 totaling \$.9 million. The total of \$2.2 million will be netted against the
21 amount of initial equity investment to be made by MLGW. A similar
22 transaction will occur on behalf of A&L at the time of its equity investment
23 into the LLC.
24

25 These Prior Costs and Interim Contributions are recorded on the books of
26 Memphis Networkx. On Memphis Networkx accounting records, these costs
27 would be spread to the various general ledger expense accounts. On the
28 records of the MLGW Telecom Division, these costs are recorded by journal
29 voucher or other accounting entry to the investment in joint venture account.
30 MLGW's Telecom Division pays no bills for Memphis Networkx. The only
31 entries are credits to cash and charges to the investment account to track the
32 twice monthly operating cash advances. At fiscal year end 1999, MLGW
33 made an entry to record its equity in the loss of Memphis Networkx of
34 approximately \$1.9 million, plus allocable internal expenses related to
35 Telecom of \$133,000. Similar entries are anticipated in each subsequent year
36 of operation.
37

38 Q. PLEASE LIST ALL EXPENSES INCURRED PRIOR TO 1999
39 RELATED TO MLGW'S ENTRY INTO TELECOMMUNICATIONS.
40 HOW HAVE THESE COSTS BEEN RECOVERED? (#51)
41

42 A. As a threshold matter, MLGW submits, as it did in Response No. 23, that it is
43 not required to recapture expenses incurred prior to the formation of its
44 Telecommunications Division on August 19, 1999, and that its decision to

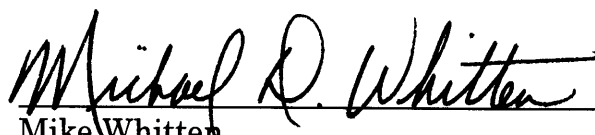
1 recapture all material costs in 1999 goes well beyond the applicable legal
2 requirement. Prior to 1999, MLGW did not incur any financially material
3 expenses related to the entry into telecommunications. MLGW's efforts prior
4 to 1999 were strategic in nature, with telecommunications being investigated
5 as one of several possible activities or investment opportunities for the
6 Electric Division. In light of this, there are no costs prior to 1999 to be
7 recovered, and this was concurred with by our external accountants, as
8 evidenced by the fact that there is no prior year comparative disclosure in
9 Footnote 8 to the 1999 Annual Report.

10
11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12
13 **A. Yes.**
14
15
16

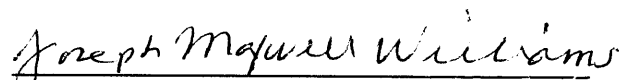
1 VERIFICATION

2 I, Mike Whitten, declare under penalty of perjury that I am authorized
3 by Memphis Light, Gas & Water Division to testify on its behalf, that I have caused
4 the foregoing written testimony to be prepared on my behalf, that I have read the
5 foregoing testimony and that the statements contained therein are true and correct
6 to the best of my knowledge, information and belief.

7
8 
9 Mike Whitten
10 Internal Auditor
11 Memphis Light, Gas & Water Division
12
13

14 STATE OF TENNESSEE)
15)
16 COUNTY OF SHELBY)
17

18 Sworn to and subscribed before me this 10th day of May, 2000.
19

20
21 
22 Notary Public
23 My Commission Expires: _____
24

25 MY COMMISSION EXPIRES 8-29-2001

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**

3 **IN RE: APPLICATION OF MEMPHIS)**
4 **NETWORK, LLC FOR A CERTIFICATE OF)**
5 **PUBLIC CONVENIENCE AND)**
6 **NECESSITY TO PROVIDE INTRASTATE)**
7 **TELECOMMUNICATIONS SERVICES)** **DOCKET NO. 99-00909**
8 **AND JOINT PETITION OF MEMPHIS)**
9 **LIGHT GAS AND WATER DIVISION,)**
10 **A DIVISION OF THE CITY OF MEMPHIS,)**
11 **TENNESSEE ("MLGW") AND A&L)**
12 **NETWORKS-TENNESSEE, LLC ("A&L"))**
13 **FOR APPROVAL OF AGREEMENT)**
14 **BETWEEN MLGW AND A&L REGARDING)**
15 **JOINT OWNERSHIP OF MEMPHIS)**
16 **NETWORK, LLC)**

17
18
19 **PRE-FILED SUPPLEMENTAL TESTIMONY OF JOHN McCULLOUGH**
20 **ON BEHALF OF MLGW**

21
22 **Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE**
23 **AND BUSINESS ADDRESS.**

24
25 **A. My name is John McCullough. I am Vice President of Finance and Secretary-**
26 **Treasurer of Memphis Light, Gas and Water Division, a Division of the City**
27 **of Memphis, Tennessee. My business address is Memphis Light, Gas and**
28 **Water Division, 220 South Main Street, Memphis, Tennessee 38103.**

29
30
31 **Q. ARE YOU THE SAME JOHN McCULLOUGH WHO PRE-FILED**
32 **REBUTTAL TESTIMONY IN THIS MATTER ON BEHALF OF MLGW**
33 **ON MARCH 23, 2000?**

34
35 **A. Yes, I am.**

36
37
38 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

39
40 **A. The purpose of my testimony is to respond to the TRA Staff data requests.**
41 **Within this testimony, I would like to address three specific issues that are**
42 **focal points of the Staff's data requests: first, to explain the MLGW**
43 **Telecommunications Division and its relationship to Memphis Networkx and**

1 to MLGW's Electric Division; second, to provide additional details with
2 respect to allocation of costs between other Divisions of MLGW and MLGW's
3 Telecommunications Division; and third, to provide additional details on the
4 affiliate transaction guidelines that MLGW will follow with respect to
5 transactions with Memphis Networkx. I also want to put the cost allocation
6 and cross subsidy issues in perspective.
7
8

9 **Q. PLEASE EXPLAIN THE MLGW TELECOMMUNICATIONS DIVISION**
10 **AND ITS RELATIONSHIP TO BOTH MEMPHIS NETWORKX AND TO**
11 **MLGW'S ELECTRIC DIVISION.**
12

13 **A.** MLGW's Telecommunications Division will not be providing the
14 telecommunications services under the requested certificate; it will not own
15 any telecommunications facilities or equipment; and it will not have any of its
16 own employees. All of those functions will be performed by Memphis
17 Networkx. Instead, the Telecommunications Division is essentially an
18 accounting device that MLGW has created as a division within its Electric
19 Division to serve two primary purposes: first, it holds MLGW's investment
20 interest in Memphis Networkx; and second, it acts as an accounting entity to
21 capture any MLGW's internal costs related to MLGW's involvement in the
22 formation and operation of Memphis Networkx. Attached in Exhibit 29 is an
23 organizational chart showing the relationship between MLGW's Electric
24 Division, MLGW's Telecommunications Division, and Memphis Networkx, and
25 the various transactions involving the Telecommunications Division.
26
27

28 **Q. PLEASE DESCRIBE HOW THE TELECOMMUNICATIONS DIVISION**
29 **HOLDS MLGW'S INVESTMENT INTEREST IN MEMPHIS NETWORKX.**
30

31 **A.** The Telecommunications Division will hold MLGW's membership interest in
32 Memphis Networkx, LLC. The Telecommunications Division will be
33 responsible for making MLGW's capital contribution to Memphis Networkx
34 upon receipt of regulatory approval, and will be responsible for making any
35 other subsequent capital contributions that MLGW chooses to make. From
36 its membership interest in Memphis Networkx, the Telecommunications
37 Division will receive distributions from Memphis Networkx as set forth in the
38 Operating Agreement, which the Telecommunications Division will in turn
39 use to repay the inter-division loan from MLGW's Electric Division, to
40 reimburse MLGW for any costs allocated to the Telecommunications Division,
41 and to make dividends of excess funds to MLGW's Electric Division.
42

1
2 **Q. PLEASE DESCRIBE HOW THE MLGW TELECOMMUNICATIONS**
3 **DIVISION ACTS AS AN ACCOUNTING ENTITY TO CAPTURE**
4 **MLGW'S INTERNAL COSTS RELATING MEMPHIS NETWORKX.**

5
6 **A.** MLGW has always intended to allocate and capture costs relating to its
7 involvement in the formation and operation of Memphis Networkx. The
8 Telecommunications Division is a distinct accounting entity for purposes of
9 capturing those costs. MLGW has established a separate charge code for the
10 charging of specific costs to the Telecommunications Division, and a fixed
11 time distribution rate is in place for allocation of time related to the less than
12 15 employees who, from time to time, have had involvement in MLGW's
13 participation in Memphis Networkx prior to and during this proceeding.
14

15
16 **Q. YOU INDICATED THAT YOU WANTED TO PUT THE COST**
17 **ALLOCATION AND CROSS SUBSIDY ISSUES IN PERSPECTIVE.**
18 **PLEASE EXPLAIN THAT STATEMENT.**
19

20 **A.** Concerns have been raised regarding potential improper allocations between
21 MLGW and Memphis Networkx. First, there are no allocations that occur
22 between MLGW and Memphis Networkx. Memphis Networkx is a separate
23 entity, with its own employees, and maintains separate books. Therefore, the
24 allocation issue relates to allocations between MLGW's divisions.
25

26 As explained later in my testimony, less than fifteen employees have done
27 work on the telecommunications project. The cost allocations for the work of
28 these employees to this division represents two-hundredths of one percent of
29 the Electric Division budget, based upon allocated expenses of approximately
30 \$133,000 for 1999 for payroll, rent, overhead and miscellaneous and revenues
31 of approximately \$700 million. Typically, accountants use a benchmark of 2-
32 5% of revenues before an expense is deemed material.
33

34 Second, MLGW and A&L have agreed to share "Prior Costs" and
35 "Subsequent Costs" as defined in the Umbrella Agreement (Exhibit M to the
36 supplemental filing to the Memphis Networkx application). Prior Costs include
37 consulting and other services and costs incurred by MLGW and A&L to
38 decide whether and how to provide telecom services. Subsequent Costs are
39 additional costs incurred between November 8, 1999 (the date of the
40 Umbrella Agreement and the Operating Agreement) and the date of a non-
41 appealable final order of the TRA. Exhibit C to the Umbrella Agreement sets
42 forth the true up of Prior Costs incurred by MLGW and A&L as of November
43 4, 1999. MLGW and A&L make Interim Contributions to Memphis
44 Networkx pursuant to paragraph 6 of the Umbrella Agreement twice a month.

1 From these Interim Contributions Memphis Networkx pays its own bills.
2 After approval of the Application, Prior Costs, Subsequent Costs and Interim
3 Contributions will be offset against Capital Contributions of each member
4 under the Operating Agreement. As of April 30, 2000, MLGW and A&L have
5 each paid over \$2 million for Prior Costs and Interim Contributions.
6

7 Third, MLGW has no incentive to cross subsidize Memphis Networkx because
8 Memphis Networkx is not a wholly owned subsidiary. Any subsidy to
9 Memphis Networkx would also partially inure to the benefit of A&L. MLGW
10 has no interest in doing that. MLGW has an incentive to properly identify all
11 Prior Costs, Subsequent Costs and Interim Contributions, because A&L will
12 pay half of them. One of the reasons for entering into the joint venture was
13 to share the risk. MLGW also has incentive, to maintain low electric rates.
14 MLGW has the lowest combined utility rates in the country, and with the
15 threat of competition in the electric industry, it has the incentive to keep
16 rates as low as possible. As of May 5, 2000, MLGW decreased its electric
17 rates by 1.1%. One of the purposes of MLGW's involvement in this venture is
18 to generate revenues that will help to keep electric rates low.
19

20 **Q. UPON CERTIFICATION, HOW SIGNIFICANT WILL MLGW'S**
21 **INTERNAL COSTS BE?**
22

23 **A.** In my view, these internal costs will be very insignificant. In fact, the only
24 costs that I foresee are cost allocations for the time that MLGW's executives
25 spend serving as Governors on the Memphis Networkx Board of Governors and
26 for the time that MLGW's executives spend on matters relating to MLGW's
27 current and future investments in Memphis Networkx. Once Memphis
28 Networkx is operational, I anticipate that less than five percent (5%) of these
29 employees' time will be devoted to those functions. Of course, if their actual
30 time is greater than anticipated, these costs will be captured in accordance
31 with MLGW's cost allocation process.
32

33
34 **Q. WILL MLGW PROVIDE THE AUTHORITY WITH A PERIODIC COST**
35 **ALLOCATION COMPLIANCE AUDIT?**
36

37 **A.** Yes, as MLGW indicated in its response to TRA Data Request No. 2 dated
38 March 23, 2000. Upon successful completion of the application process before
39 TRA, MLGW will require its external audit firm (currently Deloitte-Touche)
40 to expand or modify its annual audit procedures to comply with the
41 requirements for a "cost allocation compliance" audit, including the issuance
42 of an opinion on such compliance.
43
44

1 **Q. ARE THERE ANY COSTS TO ALLOCATE BETWEEN MEMPHIS**
2 **NETWORKX AND ANY DIVISION OF MLGW?**
3

4 **A.** No, there are not. Memphis Networkx is a separate company; it has separate
5 management and employees; it has separate facilities and equipment; and
6 there will be no jointly owned or shared operations, employees, facilities,
7 equipment or other assets. Therefore, there is nothing that would require an
8 allocation of costs between MLGW and Memphis Networkx. Any transaction
9 between MLGW and Memphis Networkx will be at arm's length and in
10 accordance with the affiliate transaction guidelines that MLGW has
11 established in this proceeding.
12

13 **Q. HAS MLGW MADE ANY CHANGES TO ITS AFFILIATE**
14 **TRANSACTION GUIDELINES SINCE YOUR PREVIOUS PRE-FILED**
15 **TESTIMONY?**
16

17 **A.** No, we have not. We have reviewed the Consumer Advocate's comments that
18 were filed in this Docket on May 5, 2000, and it appears that the Consumer
19 Advocate is primarily concerned with the treatment of non-tariffed
20 transactions between MLGW and Memphis Networkx. As the Consumer
21 Advocate correctly points out, our Proposed Safeguards apply a fair market
22 value standard to all of these transactions. The FCC Affiliate Transaction
23 Guidelines and the presumptive rules under the NARUC Guidelines, on the
24 other hand, are more complex, and involve a consideration of two primary
25 factors: (i) whether MLGW or Memphis Networkx regularly provides these
26 services or assets to independent third parties under contract; and, if not, (ii)
27 whether fair market value or fully allocated cost is the more appropriate
28 price for these services and assets. When we originally looked at this issue,
29 we did not see many non-tariffed transactions between MLGW and Memphis
30 Networkx other than pole attachment and conduit rental arrangements, which
31 we will handle under the statutory standard established in T.C.A. § 7-52-405.
32 Therefore, we believed and continue to believe that the minimal number and
33 value of other non-tariffed affiliate transactions are not sufficient to justify
34 developing and administering the more detailed affiliate transaction policy
35 prescribed by the FCC Affiliate Transaction Rules. I would point out that
36 MLGW does not have any financial incentive to cross-subsidize Memphis
37 Networkx through affiliate transactions; but as an additional precaution,
38 MLGW will make available any of these non-tariffed services to third parties
39 under non-discriminatory terms and conditions.
40

41
42 **Q. DO THE NARUC COST ALLOCATION AND AFFILIATE**
43 **TRANSACTION GUIDELINES PERMIT THE REGULATOR TO**
44 **APPROVE YOUR FAIR MARKET VALUE STANDARD?**

1
2 A. Yes. As I understand it from reviewing the Consumer Advocate's comments,
3 the NARUC Guidelines give regulators flexibility to respond to situations like
4 this one under appropriate circumstances. I believe that these circumstances
5 justify approval of the fair market value standard as set forth in the Proposed
6 Safeguards.
7

8
9 Q. PLEASE IDENTIFY THE MOST LIKELY NON-TARIFFED SERVICES,
10 PRODUCTS AND ASSET TRANSFERS FROM MLGW TO MEMPHIS
11 NETWORKX, AND DESCRIBE HOW THOSE TRANSACTIONS WILL BE
12 PRICED.
13

14 A. The most likely non-tariffed services, products and asset transfers from
15 MLGW to Memphis Networkx will relate to Memphis Networkx's rental of
16 space on or in MLGW's overhead and underground distribution system.
17 MLGW already makes these assets available to independent third parties
18 under contract, and these third parties would certainly comprise more than
19 fifty percent (50%) of the total third party uses after taking into account
20 Memphis Networkx's anticipated needs. If the FCC Affiliate Transaction
21 Rules were to apply, Memphis Networkx would pay the same price as provided
22 to third parties under contract. For pole attachments, we are required by law
23 to charge Memphis Networkx the contract price for pole attachments anyway,
24 and we have also decided to follow the same principle for pricing access to our
25 underground facilities. In accordance with the requirements of T.C.A. § 7-52-
26 405, as applicable, MLGW will charge Memphis Networkx the highest rate for
27 pole attachments and underground installations as it charges any third party
28 under comparable agreements.
29
30

31 Q. PLEASE IDENTIFY THE MOST LIKELY NON-TARIFFED SERVICES,
32 PRODUCTS AND ASSET TRANSFERS FROM MEMPHIS NETWORKX
33 TO MLGW, AND DESCRIBE THE PRICE THAT MLGW WILL PAY
34 MEMPHIS NETWORKX UNDER THOSE TRANSACTIONS.
35

36 A. I do not anticipate MLGW purchasing any such services, products or assets
37 from Memphis Networkx, since under the amended application, Memphis
38 Networkx will not be seeking to directly serve governmental entities such as
39 MLGW.
40

41
42 Q. YOU INDICATED THAT MLGW DOES NOT HAVE ANY FINANCIAL
43 INCENTIVE TO CROSS SUBSIDIZE MEMPHIS NETWORKX

THROUGH AFFILIATE TRANSACTIONS. PLEASE EXPLAIN THAT STATEMENT.

A. In my view, it is fairly simple. Memphis Networkx is not a wholly owned affiliate of MLGW. MLGW will effectively hold a fifty three percent (53%) financial interest in Memphis Networkx. Therefore, any benefit from a cross subsidization of Memphis Networkx would not directly inure to MLGW's benefit. For every dollar subsidy that MLGW were to confer upon Memphis Networkx, MLGW would only realize a fifty three cent benefit. That simply makes no financial sense at all. In fact, the concerns in joint ventures are typically quite the opposite, because each participant has a financial incentive to charge the entity too much, rather than too little, for the services and assets that it provides. Stated another way, both MLGW and A&L have a financial incentive to charge Memphis Networkx too much (or to pay Memphis Networkx too little) for services and assets, because the other member effectively pays a part of the cost of those services. (MLGW would effectively pay 53%, and A&L would effectively pay 47% of those costs). As I understand it, there are long standing conflict of interest statutes that apply to Tennessee corporations and limited liability companies such as Memphis Networkx, which would prevent the members of Memphis Networkx from overcharging Memphis Networkx for transactions between with the members. The members have also included safeguards under the Operating Agreement to address the potential that one member might attempt to charge Memphis Networkx too much or pay Memphis Networkx too little. Section 5.6(g) of the Operating Agreement requires that both members approve any contract between Memphis Networkx on the one hand and MLGW, A&L or an affiliate of either on the other. Section 8.3 also addresses this issue by requiring that any such transaction either be consistent with an arms' length transaction or be valid under Tennessee conflict of interest requirements.

Q. NOW PLEASE ADDRESS THE SPECIFIC STAFF DATA REQUESTS.

THE COST ALLOCATION MANUAL PROVIDED ON APRIL 5, 2000 INDICATES THAT ALLOCATIONS AND PERCENTAGES HAVE NOT BEEN DEVELOPED FOR THE TELECOMMUNICATIONS DIVISION. FOR EACH ACCOUNT OF THE ELECTRIC DIVISION PLEASE EXPLAIN THE METHOD AND PROCEDURE FOR ALLOCATING APPLICABLE AMOUNTS TO THE TELECOMMUNICATIONS DIVISION. (#32)

A. Because of the limited role of the Telecommunications Division, we are not allocating by account. Instead, we have established and will maintain allocations for each employee involved with the telecommunications project.

The labor costs and associated overheads for each employee have been allocated to the Telecommunications Division according to each employee's percentage allocation and will be posted to charge code 5490. For example, for an employee with an allocation of five percent (5%) to the Telecommunications Division and 95% to the other Divisions of MLGW, MLGW will post five percent (5%) of labor and overhead costs associated with that employee to charge code 5490. MLGW also posts directly attributable costs (such as postage, legal expenses, and travel expenses) to charge code 5490.

Q. PROVIDE A CHART OF ACCOUNTS FOR MLGW'S ELECTRIC AND TELECOMMUNICATIONS DIVISIONS. (#33)

A. See attached as Exhibit 33 the MLGW Electric Division Chart of Accounts. The following accounts are included in the Electric Division Chart of Accounts and were set up to use exclusively for the Telecommunication Division:

1174.0150	-	Accounts Receivable from Telecom
1174.3000	-	Investment in Memphis Network
1193.0100	-	Misc. Deferred Debit-Telecom
1232.0150	-	Accts. Payable to MLGW-Electric Division
1232.0300	-	Accts. Payable-Telecom Division to Memphis Network
1421.0500	-	Misc. Non-Operating Income-Telecom
1421.0600	-	Misc. Non-Operating Income-Equity in Earnings (Loss) Memphis Network

Q. FOR EACH EXAMPLE PRESENTED BELOW, PROVIDE ALL DEBITS AND CREDITS THAT MLGW WILL MAKE TO ITS BOOKS TO ACCOUNT FOR THE EXPENSES INCURRED. BE SURE TO PROVIDE A DESCRIPTION OF THE ACCOUNTS USED TO BOOK THE ENTRY AND THE BASIS FOR ALLOCATIONS TO BE MLGW DIVISIONS:

EXAMPLE 1: THE PRESIDENT OF MLGW HAS SALARY EXPENSE OF \$1,000 FOR THE MONTH OF APRIL OF 2000. HOW WILL THIS EXPENSE BE BOOKED AND ALLOCATED TO THE APPROPRIATE DIVISIONS?

EXAMPLE 2: MLGW'S PRESIDENT IS ALLOCATED \$300 FOR DEPRECIATION EXPENSE INCURRED DURING APRIL OF 2000. HOW WILL THIS EXPENSE BE BOOKED AND ALLOCATED TO THE APPROPRIATE DIVISION?

1 **EXAMPLE 3: DURING APRIL 2000, MEMPHIS NETWORKX**
2 **INCURRED LEGAL EXPENSES OF \$500 DURING LITIGATION**
3 **OF ITS CCN APPLICATION. WILL MLGW OR MEMPHIS**
4 **NETWORKX BOOK THIS EXPENSE? PLEASE PROVIDE THE**
5 **DEBITS AND CREDITS TO BOOK THIS EXPENSE. (#36)**
6

7 **A. Example 1:**

8 \$1,000 salary expense. 95% or \$950 will be charged to charge code 0118
9 (Supervision) that splits to A&G Accounts. 57% to Electric Division. 27% to
10 the Gas Division and 16% to the Water Division. 5% or \$50 will be charged to
11 charge code 5490 which splits to account 1-421-0500 (Miscellaneous-None-OP
12 Income Telecom Expense).
13

14 Example 2:

15 See explanation to question 47.
16

17 Example 3: MLGW will not book this expense. See Ward Huddleston's
18 response to this question in his Supplemental Pre-Filed Testimony.
19

20 **Q. PAGE 5 OF MLGW'S CAM POLICY & GUIDELINES SECTION**
21 **STATES THAT THE SUPERVISOR'S AREA CHARGES ARE**
22 **ALLOCATED "BASED ON THE FUNCTION OF THE AREA".**
23 **(A) PLEASE EXPLAIN WHAT "BASED ON THE FUNCTION OF THE**
24 **AREA" MEANS.**
25 **(B) ARE THESE CHARGED BASED ON ACTIVITIES? IF NOT, WHY?**
26 **(#40)**
27

28
29 **A. (A), (B) The fixed time for an area is based on the actual functions of the**
30 **area. Individual activities are aggregated to develop the overall function of**
31 **the area. For example, Internal Audit performs various audits which may at**
32 **certain times concentrate on a specific division. Our policy is not to rely on**
33 **the diligence of specific activity reporting and maintenance thereof, but to**
34 **base the allocation on the function of the area over time.**
35

36 **Q. PAGE 11 OF MLGW'S CAM POLICY & GUIDELINES SECTIONS**
37 **STATES THAT A REVIEW OF MLGW ACCOUNTING POLICY IS**
38 **MADE EVERY FIVE YEARS.**
39 **(A) PROVIDE THE DATE WHEN THE LAST REVIEW WAS MADE.**
40
41 **(B) PROVIDE A COPY OF THIS REVIEW.**
42

1 (C) HAS THE ACCOUNTING POLICY BEEN REVIEWED SINCE THE
2 FORMATION OF THE TELECOMMUNICATIONS DIVISION AND
3 MEMPHIS NETWORK? (#41)
4

5 (A) June 5, 1996.

6 (B) See attached Exhibit 41.

7 (C) Scheduled for 2nd and 3rd quarter of 2000.
8

9 Q. PAGES 13 AND 14 OF MLGW'S CAM SHOWS STANDARD
10 ALLOCATION PERCENTAGES USED TO ALLOCATE EXPENSES
11 BETWEEN THE ELECTRIC, GAS AND WATER DIVISIONS.

12 (A) HOW WERE THESE PERCENTAGES CALCULATED? HOW
13 OFTEN ARE THESE PERCENTAGES UPDATED?
14

15 (B) WHAT PERCENTAGE WILL BE USED TO ALLOCATE EXPENSES
16 TO THE TELECOM DIVISION?
17

18 (C) 43% OF CUSTOMER EXPENSE IS ALLOCATED TO THE
19 ELECTRIC DIVISION. IS ANY OF THIS EXPENSE FURTHER
20 RE-ALLOCATED TO THE TELECOM DIVISION? PLEASE EXPLAIN.
21

22 (D) IS MLGW INVOLVED IN ANY BUSINESS ACTIVITIES OTHER
23 THAN GAS, LIGHT, WATER OR TELECOMMUNICATIONS? FOR
24 EXAMPLE, IS MLGW INVOLVED IN CELLULAR ACTIVITIES? HOW
25 ARE COSTS ALLOCATED TO THESE ACTIVITIES IF THERE ARE
26 ANY? DOES MLGW'S CAM HAVE THIS TYPE OF PROCEDURE
27 DOCUMENTED? (#42)
28

29 (A) (1) Customer - The ratio of Division customers to total customers.

30 (2) Customer Service - Based on the number of service calls for each Division.

31 (3) Commercial Customer - Ratio of Division commercial and industrial
32 customers to total customers.

33 (4) Administrative & General - Section 3 of CAM - Administrative & General
34 Expense Allocation Factor.

35 (5) Regular Payroll \$ - Based on regular payroll in F.E.R.C. accounts for each
36 Division. Electric, Gas and Water, stores and transportation are used to
37 allocate pension and insurance costs.

38 Page 14 of CAM:

39 (6) Construction & Maintenance - Based on three year average of the capital
40 costs broken down by electric, gas and water.

41 (7) Construction & Maintenance Gas Division - Based on three years average
42 of construction for gas distribution.

43 (8) construction & Maintenance Water Division - Based on three years
44 average of construction for water distribution.

(B) Charge code 5490 which allocates 100% to Telecom will be used to accumulate labor for approximately 11 employees based on good faith estimate of a percent of their total time that relates to the Telecom Division. Other costs will also be accumulated in this charge code that are directly charged such as outside legal expenses and travel. The current allocations will not be revised at this time because we are collecting 100% to charge code 5490.

(C) No. 43% of customer expense is based on the ratio of electric division customers to total customers. Since the Telecom Division has no customers and no customer expense, none will be allocated to the Telecom Division.

(D) No.

Q. PAGE 14 OF MLGW'S CAM REFERS TO "CUSTOM SPLITS". WHAT IS A "CUSTOM SPLIT"? PLEASE PROVIDE EXAMPLES. (#43)

A. A "custom split" is an allocation that varies from the standard percentage allocators defined in the Cost Allocation Manual on pages 13-14. To date, MLGW has not used or developed any custom splits.

Q. THE "ALLOCATION OF COMMON COST" SECTION OF MLGW'S CAM STATES THAT: "A FOURTH ALLOCATION TO TELECOM HAS BEEN ADDED AND A PERCENTAGE ASSIGNED FOR SEVERAL EMPLOYEES' LABOR AND DISBURSEMENTS."

(A) PLEASE ELABORATE ON THIS STATEMENT. IDENTIFY THE EMPLOYEES AND THEIR POSITIONS ALONG WITH A LIST OF THE "DISBURSEMENT" BEING REFERRED TO.

(B) WILL A CERTAIN PERCENTAGE BE ASSIGNED TO THE TELECOM DIVISION AT A LATER DATE? IF SO, WHEN? WILL IT BE SUBMITTED TO THE TRA? (#44)

(A) For approximately 11 employees a good faith estimate of the percentage of this time relating to the Telecom Division is being charged to charge code 5490 (Telecom Division) which allocates 100% to account #14210500 (miscellaneous non-operating income-Telecom Division). The remaining time for each employee is charged to other charge codes. For example, charge code 0118 (Supervision) splits 57% to Electric, 27% to Gas, and 16% to Water. Such an employee's time is therefore split four ways, Electric, Gas, Water and Telecom.

CAM Section 7 identifies the employees, their positions and the good faith estimate of time relating to Telecom. The disbursements referred to are outside legal costs and travel which will be directly reported to charge code 5490.

(B) We do not foresee enough common expenses or number of employees involved in Telecom to warrant modification of the common cost allocations on pages 13 and 14 of Section 1 of the CAM.

Q. THE "ALLOCATION OF COMMON COST" SECTION OF MLGW'S CAM SHOWS THAT 5% OF SHERYL RADICIONI'S FIXED TIME CHARGES IS ALLOCATED TO THE TELECOM DIVISION.

(A) PLEASE EXPLAIN HOW THIS PERCENTAGE OF 5% WAS CALCULATED. HOW OFTEN IS IT UPDATED?

(B) PLEASE EXPLAIN HOW THE 95% OF FIXED TIME CHARGES ARE ALLOCATED TO THE OTHER MLGW DIVISION IN THIS EXAMPLE.

(C) WHEN COMMON COSTS ARE ALLOCATED TO THE TELECOM DIVISION, ARE THOSE COSTS PASSED ON TO MEMPHIS NETWORKX? PLEASE EXPLAIN HOW THIS PROCESS WORKS.

(D) WHO WILL BE PERFORMING MEMPHIS NETWORKX'S CUSTOMER BILLING AND WHAT CHARGES WILL BE PAID FOR SUCH BILLING?

(E) DOES MLGW PERFORM BILLING FUNCTIONS FOR ANY OTHER ENTITIES?

(F) WILL MLGW PERFORM ANY CONSTRUCTION AND/OR ENGINEERING FUNCTIONS FOR MEMPHIS NETWORKX? IF SO, WILL MEMPHIS NETWORKX BE CHARGED FOR THESE ACTIVITIES? HOW WILL THESE CHARGES BE DETERMINED? PROVIDE A COPY OF ANY CONTRACT FOR SUCH SERVICES. (#45)

(A) A good faith estimate was determined subjectively based on Sheryl Radicioni's administrative support to the Vice President of Construction and Maintenance. A review of meetings and activities of the Vice President was made to determine the portion related to Telecom. The percentage was initially determined on March 10, 2000, based upon an internal review of her time spent on Telecom issues for 1999. An audited review covering 1999 was also performed by MLGW's external accounting firm. These time allocations will be reviewed quarterly in 2000 to ensure that the allocation level continues to be appropriate. Beginning in 2001, it will be reviewed every six months.

(B) The remaining 95% of fixed time charges is allocated to charge code 0119 which splits to the Electric Division 57%, Gas Division 27% and Water Division 16%.

(C) We do not anticipate common costs other than the percentage of labor for the approximately 11 employees, legal costs and travel being allocated to the

1 Telecom Division. These costs will not be passed on to Memphis Networkx as
2 they relate to MLGW's interest.

3 (D) Memphis Networkx billing will be performed by Memphis Networkx as
4 addressed in Mr. Huddleston's testimony.

5 (E) MLGW does billing for City of Memphis sewer fee, city service fee, fire
6 protection and for the City of Arlington, a solid waste fee. MLGW is
7 reimbursed for billing expenses by these entities.

8 (F) MLGW will bid on construction activities for Memphis Networkx. MLGW
9 will establish its bid price based on no less than its calculation of fully
10 allocated costs for the project, and MLGW would perform similar services for
11 unaffiliated third parties using this same minimum pricing methodology.
12 This bid price, assuming that Memphis Networkx awards the contract to
13 MLGW, will also represent fair market value for those services.
14

15 **Q. WHAT PERCENTAGE OF THE ELECTRIC DIVISION'S BUDGET**
16 **DOES THE ALLOCATION FROM THE 11 EMPLOYEES**
17 **REPRESENT?**
18

19 **A.** Based upon revenues of approximately \$700 million, and allocated expenses
20 of \$133,000, the percentage is two one-hundredths of one percent. As stated
21 earlier, we expect this percentage to go down after regulatory approval.
22 Based on discussions with our General Auditor, it is my understanding that a
23 typical audit benchmark for materiality is 2-5% of revenues.
24

25 **Q. WHAT IMPACT DOES THE ALLOCATION BETWEEN THE**
26 **ELECTRIC DIVISION AND THE TELECOM DIVISION HAVE ON**
27 **MEMPHIS NETWORKX?**
28

29 **A.** None. Allocations within MLGW relate to MLGW's internal operations.
30 These costs do not relate to the operations of Memphis Networkx.
31

32 **Q. THE "ADMINISTRATIVE AND GENERAL EXPENSE ALLOCATION**
33 **FACTOR" SECTION OF MLGW'S CAM STATES THAT: "AT THIS**
34 **TIME, THIS WILL NOT BE A VEHICLE FOR ALLOCATING COSTS**
35 **TO THE TELECOM DIVISION AS THESE COSTS ARE IDENTIFIED**
36 **SPECIFICALLY."**

37 **(A) HOW ARE A&G COSTS IDENTIFIED SPECIFICALLY FOR THE**
38 **TELECOM DIVISION?**
39

40 **(B) WILL THE TELECOM DIVISION BE ALLOCATING ANY OF THE**
41 **COMMON A&G EXPENSES?**
42

43 **(C) IS THE TELECOM DIVISION ALLOCATED ANY A&G COSTS? IF**
44 **SO, ARE THESE COSTS PASSED ON TO MEMPHIS NETWORKX?**

1 **PROVIDE A DETAILED DESCRIPTION OF THE PROCEDURES**
2 **USED TO ACCOMPLISH. (#46)**
3

4 (A) See my earlier responses to #44 and #45.

5 (B) No.

6 (C) Section 7 of the CAM includes journal voucher #6077 that was made to
7 allocate A&G loading, rents and miscellaneous general expenses and
8 maintenance of general plant and car allowance. The A&G loading
9 percentage detailed calculation is shown in Section 6 of the CAM.
10

11 **Q. THE "INTERDEPARTMENTAL RENTS" SECTION OF MLGW'S CAM**
12 **STATES THAT: "DURING 1999, WE ALLOCATED A SMALL**
13 **PERCENTAGE TO THE TELECOM DIVISION FOR OFFICE SPACE**
14 **AND EQUIPMENT USED BY MLGW EMPLOYEES WHO WERE**
15 **DIRECTLY INVOLVED WITH TELECOM DIVISION MATTERS."**
16

17 (A) **PROVIDE THE TOTAL AMOUNT OF MLGW**
18 **INTERDEPARTMENTAL RENTS EXPENSE ALLOCATED TO THE**
19 **TELECOM DIVISION DURING 1999.**
20

21 (B) **PROVIDE A DETAILED EXPLANATION OF HOW THIS**
22 **ALLOCATION WAS DETERMINED AND THE BASIS FOR SUCH**
23 **ALLOCATION.**
24

25 (C) **PROVIDE THE TOTAL AMOUNT OF MLGW**
26 **INTERDEPARTMENTAL RENT EXPENSE FOR 1999.**
27

28 (D) **HOW WILL INTERDEPARTMENTAL RENT EXPENSE BE**
29 **ALLOCATED TO THE TELECOM DIVISION IN THE FUTURE?**
30

31 (E) **HAS MEMPHIS NETWORKX PREVIOUSLY USED ANY OF MLGW**
32 **FACILITIES (BUILDINGS, COMPUTERS, EQUIPMENT, OFFICE**
33 **FURNITURE, ETC.)? WILL MEMPHIS NETWORKX BE USING MLGW**
34 **FACILITIES IN THE FUTURE? IF SO, WILL MEMPHIS NETWORKX**
35 **BE CHARGED FOR SUCH USE AND HOW WILL CHARGES BE**
36 **DETERMINED? (#47)**
37

38 **A. (A) \$4,351.**

39 (B) Interdepartmental rents include depreciation, taxes and cost of capital.
40 Telecom's share was calculated as follows:
41

42 Buildings - The approximate square footage of the office space used by the
43 eleven employees who worked on Telecom multiplied by their percentage of
44 time divided by the square feet of the rented buildings gives you the square

1 foot percentage applicable to Telecom. This percentage is used to allocate
2 total depreciation and total taxes to arrive at the time cost of capital for
3 rented buildings.
4

5 Communication equipment, office furniture and fixtures, and computer
6 equipment were allocated based on employee time. The percentage of the
7 eleven employees was .99 of a person. .99 divided by 2,600 employees equals
8 .000381. This employee allocation was multiplied by the depreciation, taxes
9 and cost of capital associated with communication equipment, office furniture
10 and computer equipment. To capture other costs associated with rented
11 buildings and equipment, we analyzed the accounts for miscellaneous general
12 expenses and maintenance of general plant to pick up additional costs. These
13 costs were allocated by using either the square foot allocation percentage or
14 the employee allocation percentage depending on the type of charge. See
15 Section 7 for Telecom allocations.
16

17 *Examples of miscellaneous general expenses are security, trash pickup, and
18 janitors. Examples of maintenance of general plant are PC repair, cutting
19 grass, repairing locks and maintaining plumbing.
20

21 (C) \$4,739,543.

22 (D) Annually, we will update the percentage and procedure.

23 (E) No. If Memphis Networkx uses any of MLGW's facilities, i.e., nodes at
24 substations or pole attachments, a lease agreement will be made as high as
25 or higher than the current highest lease.
26
27

28 **Q. DURING 1999, \$118,686 OF LABOR COSTS WAS ALLOCATED TO**
29 **THE TELECOM DIVISION. THIS AMOUNT WAS BASED ON AN**
30 **ALLOCATION OF ELEVEN MLGW EMPLOYEES' SALARY AND**
31 **WAGES.**

32 **(A) PLEASE EXPLAIN HOW THE SALARY ALLOCATION**
33 **PERCENTAGE OF EACH MLGW'S EMPLOYEE WAS CALCULATED.**
34 **FOR EXAMPLE, HERMAN MORRIS' SALARY ALLOCATION WAS 5%,**
35 **W.L. THOMPSON'S SALARY ALLOCATION FACTOR WAS 10%, ETC.**

36 **(B) WERE ANY OTHER MLGW EMPLOYEES INVOLVED IN THE**
37 **FORMATION OF THE TELECOMMUNICATIONS DIVISION OR**
38 **MEMPHIS NETWORKX DURING 1999 OR PRIOR TO 1999? (#48)**
39

40 **A. (A) See my response to #45(a).**

41 **(B) No.**
42

1 Q. IN LIGHT OF THE AMENDMENT TO THE APPLICATION AND
2 CHANGE IN BUSINESS PLANS, DOES MLGW NEED TO REVISE
3 THEIR PROJECTED FINANCIAL STATEMENTS? (#50)
4

5 A. No. MLGW has not filed any projected financial statements. All such
6 statements relate to Memphis Networx. Ward Huddleston will respond to
7 this data request.
8
9

10 Q. DOES THAT CONCLUDE YOUR TESTIMONY?
11

12 A. Yes.
13
14
15
16

VERIFICATION

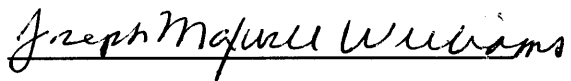
I, John McCullough, declare under penalty of perjury that I am authorized by Memphis Light, Gas & Water to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.



John McCullough
Vice President of Finance
Memphis Light, Gas & Water

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Sworn to and subscribed before me this 10th day of May,
2000.



Notary Public
My Commission Expires: _____

MY COMMISSION EXPIRES 8-29-2001